

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
 v.) I.D. No. 89000941DI
)
 DENNIS SANTIAGO,)
)
 Defendant.)

Date Submitted: November 2, 2020
Date Decided: December 28, 2020

ORDER

Upon consideration of Defendant’s Motion for Modification of Sentence (“Motion”),¹ Superior Court Criminal Rule 35, statutory and decisional law, and the record in this case, **IT APPEARS THAT:**

1. On June 1, 1989, Defendant pled guilty to one count of First-Degree Unlawful Sexual Intercourse and two counts of Possession of a Deadly Weapon During the Commission of a Felony (“PDWDCF”).²
2. On September 8, 1989, Defendant was sentenced as follows: for First-Degree Unlawful Sexual Intercourse, life imprisonment; for the first count of PDWDCF, 10 years at Level V; and for the second count of PDWDCF, 10 years at

¹ D.I. 53.

² D.I. 2.

Level V, to be served consecutively with the sentence for the first count of PDWDCF.³

3. Defendant has made many attempts to challenge and modify his sentence. To begin, on September 8, 1992, Defendant filed a Motion for Postconviction Relief.⁴ On October 26, 1992, the Superior Court denied the motion.⁵ On November 25, 1992, Defendant appealed the Superior Court's decision to the Supreme Court of Delaware.⁶ On April 21, 1993, the Supreme Court affirmed.⁷

4. On April 7, 1999, Defendant filed a Motion for Modification of Sentence.⁸ On April 23, 1999, the Superior Court denied the motion.⁹

5. On March 31, 2000, Defendant filed a Motion for Correction of Illegal Sentence.¹⁰ In that motion, Defendant clarified that he was invoking Superior Court Criminal Rules 35(a) and 61(i)(5).¹¹ The Superior Court construed the motion as a Motion for Postconviction Relief and denied it on August 3, 2000.¹² On August 16,

³ D.I. 7.

⁴ D.I. 13–14.

⁵ D.I. 17.

⁶ D.I. 19.

⁷ *Santiago v. State*, 1993 WL 144870, at *1 (Del. Apr. 21, 1993).

⁸ D.I. 27.

⁹ D.I. 28.

¹⁰ D.I. 29.

¹¹ *Id.*

¹² D.I. 34.

2000, Defendant appealed the Superior Court’s decision to the Supreme Court but then voluntarily dismissed his appeal.¹³

6. On September 11, 2000, Defendant filed another Motion for Postconviction Relief and a Motion to Withdraw Guilty Plea.¹⁴ On September 19, 2000, the Superior Court denied these motions.¹⁵ On October 4, 2000, Defendant appealed this decision to the Supreme Court,¹⁶ and on March 16, 2001, the Supreme Court affirmed.¹⁷

7. Finally, on November 2, 2020, Defendant filed the instant Motion for Modification of Sentence.¹⁸ In his Motion, Defendant asks the Court to “do something to adjust [his] sentence.”¹⁹ He explains that he has unsuccessfully sought early parole, commutation of his sentence, and an application for good cause shown from the Department of Correction pursuant to 11 *Del. C.* § 4217.²⁰ In addition to his Motion, Defendant has provided the Court with a list of programs that he has completed and educational achievements that he has attained.²¹

¹³ D.I. 35; *Santiago v. State*, 2001 WL 263122, at *1 (Del. Mar. 16, 2001).

¹⁴ D.I. 41–42.

¹⁵ D.I. 44.

¹⁶ D.I. 45.

¹⁷ *Santiago*, 2001 WL 263122, at *1.

¹⁸ D.I. 53.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

8. Superior Court Criminal Rule 35(b) governs the modification and reduction of sentences.²² Pursuant to Rule 35(b), a motion to modify a sentence of imprisonment must be filed no later than 90 days after the sentence is imposed.²³ Defendant filed the instant Motion more than 90 days after his sentence was imposed; therefore, his Motion is untimely.

9. The Court may consider an untimely motion (1) if the Department of Correction files an application pursuant to 11 *Del. C.* § 4217 or (2) in “extraordinary circumstances.”²⁴ The Department of Correction has not filed an application pursuant to 11 *Del. C.* § 4217, so this exception does not apply. Next, “extraordinary circumstances” are circumstances that “specifically justify the delay, are entirely beyond [Defendant’s] control, and have prevented [Defendant] from seeking the remedy on a timely basis.”²⁵ The Supreme Court of Delaware “has held that participation in educational and rehabilitative programs, while commendable, does not, in and of itself, constitute extraordinary circumstances for purposes of Rule 35(b).”²⁶ Because the Court does not find any qualifying extraordinary circumstances in Defendant’s Motion, the “extraordinary circumstances” exception does not apply, so Defendant’s Motion is time barred.

²² Super Ct. Crim. R. 35(b).

²³ *Id.*

²⁴ *Id.*

²⁵ *State v. Culp*, 152 A.3d 141, 145 (Del. 2016) (internal quotations and citation omitted).

²⁶ *Id.* at 145–46 (internal quotation marks and citations omitted).

10. In addition, Defendant's Motion is repetitive, so the Motion is barred on that basis as well.²⁷ Defendant filed a Motion for Modification of Sentence on April 7, 1999. Rule 35(b) specifically forbids the Court from considering repetitive motions.²⁸

11. The Court finds that Defendant's sentence is appropriate for all the reasons stated at the time of sentencing. No additional information has been provided to the Court that would warrant a modification of Defendant's sentence.

NOW, THEREFORE, IT IS ORDERED that Defendant's Motion for Modification of Sentence is **DENIED**.

Jan R. Jurden

Jan R. Jurden, President Judge

Original to Prothonotary

cc: Dennis Santiago (SBI# 00240930)
A.J. Roop (DAG)

²⁷ Super Ct. Crim. R. 35(b).

²⁸ *Id.*