

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE)
)
 v.)
) I.D. No. 1909013321
)
 IGNACIO RUSSELL,)
)
 Defendant.)

ORDER

Submitted: July 3, 2022
Decided: August 18, 2022

AND NOW TO WIT, this 18th day of August, 2023, upon consideration of Defendant’s Motion for Modification of Sentence, the sentence imposed upon the Defendant, the record in this matter, and Rule 35 of the Superior Court Rules of Criminal Procedure (“Rule 35”), it appears to the Court that:

1. On September 21, 2021, Defendant pled guilty to Carrying Concealed Deadly Weapon (“CCDW”) and Possession of Ammunition by a Person Prohibited (“PABPP”).¹ On October 1, 2021, Defendant was sentenced to fifteen years at Level V, suspended after ten years, followed by one year supervision Level IV DOC Discretion, suspended after six months for 18

¹ Suppression Hearing: Pled Guilty/ Immediate Sentencing, D.I. 31.

months at Level III.² The first 10 years of Level V time is a minimum mandatory sentence.

2. On November 22, 2021, Defendant filed his first Motion for Modification under Rule 35(a).³ That timely Motion was denied.⁴ On May 18, 2022, Defendant filed a Motion for “Sentence Review.”⁵ Due to the nature of Defendant’s request, this Motion was treated as a Motion for Modification under Rule 35(b), and that, too, was denied.⁶

3. On June 23, 2023 Defendant filed a letter with this Court simply to update on his “growth and Maturity” since being sentenced.⁷ Defendant filed this Motion on July 3, 2023.⁸ In this Motion, he now asks this Court to modify his sentence by removing all Level IV of his sentence to Level III.⁹ In support of his request, he states that because he will need to serve another year of Level III GPS on a VOP, “there is no benefit to also having to complete a Lv. 4 sentence” as it will “conflict” with his “career path that [he has] chosen” to sign up for CDL courses at American Driver Training Academy.¹⁰

² Sentence: ASOP Order Filed and Signed, D.I. 32.

³ See Defendant’s Motion for Modification of Sentence, D.I. 33.

⁴ See Order Denying Defendant’s Motion for Modification under Rule 35(a), D.I. 34.

⁵ See Defendant’s Motion for Modification (Review of Sentence), D.I. 35.

⁶ See Order Denying Defendant’s Motion for Modification under Rule 35(b), D.I. 36.

⁷ See Defendant’s Letter, D.I. 37.

⁸ See Defendant’s Motion for Reduction/Modification, D.I. 38.

⁹ *Id.*

¹⁰ *Id.* at 1.

4. The Court acknowledges and commends Defendant for his good behavior and taking the initiative to improve his life while incarcerated by learning new skills and staying out of trouble. And although Rule 35(b) the Court has discretion to “reduce the fine or term or conditions of partial confinement or probation, at any time,”¹¹ it does not allow for repetitive requests.

5. Once again, Defendant is reminded that the rule provides that “[t]he court *will not* consider repetitive requests for reduction of sentence.”¹² A motion is considered repetitive when it “is preceded by an earlier Rule 35(b) motion, even if the subsequent motion raises new arguments.”¹³ The bar to repetitive motions has no exceptions. It is absolute and flatly “prohibits repetitive requests for reduction of sentence.”¹⁴ Therefore, where Defendant has previously submitted a Motion for Modification,¹⁵ and where such motions were denied,¹⁶ this motion is also barred as repetitive. The Court cannot use its

¹¹ Del. Super. Ct. Crim R. 35(b).

¹² *Id.* (emphasis added).

¹³ *State v. Culp*, 152 A.3d 141, 144 (Del. 2016).

¹⁴ *Thomas v. State*, 812 A.2d 900, 2002 WL 31681804, at *1 (Del. 2002) (TABLE); *see also Jenkins v. State*, 954 A.2d 910, 2008 WL 2721536, at *1 (Del. 2008) (TABLE) (affirming the Superior Court’s denial of defendant’s Rule 35(b) motion for modification where Rule 35(b) “prohibits the filing of repetitive sentence reduction motions.”); *Morrison v. State*, 846 A.2d 238, 2004 WL 716773, at *2 (Del. 2004) (TABLE) (finding that defendant’s Rule 35(b) motion for modification “was repetitive, which also precluded its consideration by the Superior Court.”).

¹⁵ *See* Defendant’s Motions for Modification of Sentence, D.I. 33, 35.

¹⁶ *See* Orders Denying Defendant’s Motions for Modification, D.I. 34, 36.

discretion to ignore this bar.¹⁷

IT IS SO ORDERED that Defendant's Motion for Modification of Sentence is **SUMMARILY DISMISSED**.

/s/ Vivian L. Medinilla
Judge Vivian L. Medinilla

oc: Prothonotary
cc: Defendant
Department of Justice
Investigative Services

¹⁷ *Culp*, 152 A.3d at 145 (Del. 2016) (reversing the Superior Court's decision to grant defendant's Motion for Modification where the motion was repetitive and untimely).