

January 24, 2001

Edward C. Gill, Esquire  
16 North Bedford Street  
PO Box 824  
Georgetown, DE 19947

RE: State v. Rodney Dale  
ID #9511002427/9605014352  
Cr. Action Nos. 95-11-0177, 95-11-0180, 96-05-0414

Dear Mr. Gill:

You filed a motion for reduction of sentence under Rule 35(b) on November 15th.

This violation of probation proceeding arose from sentences imposed on April 3, 1996, for assault second degree and reckless endangering second degree (Criminal Action Nos. 95-11-0177, 95-11-0180) and on November 22, 1996, for unlawful sexual intercourse third degree (Criminal Action No. 96-05-0414). Mr. Dale's violation of probation hearing was continued until June 2, 2000, to await the disposition of charges for assault second degree, and unlawful imprisonment (Criminal Action Nos. 99-12-0631, 99-12-0632). On June 1, 2000, Mr. Dale pled guilty to the lesser included offense of assault third degree and to the unlawful imprisonment charges. The revocation hearing on the earlier sentences occurred the next day. The violation of probation was admitted, and Mr. Dale was sentenced to Level 5.

The motion is denied for the following reasons:

- (i) It is filed more than 90 days from the imposition of sentence on June 2, 2000, and no extraordinary circumstances exist to justify later consideration.
- (ii) It is repetitive and prior similar requests from Mr. Dale were rejected by this Court by letters dated August 30 and October 2, 2000, to Mr. Dale.

- (iii) When sentenced for the violation of probation on June 2, 2000, Mr. Dale was represented by counsel, and matters were presented on his behalf. The Probation Officer, the same person referenced in your letter dated January 5, 2001, was present, available for examination and shared Mr. Dale's record and her recommendations. As indicated, Mr. Dale was previously sentenced on June 1 for assault third degree and criminal impersonation. Under Rule 11(e)(1)(c), he received Level 3 probation with a condition for entry into the newly established domestic violence program. At the June revocation hearing, Mr. Dale's past convictions for six assaults were considered along with detainer for a Maryland assault. His record is violent with multiple victims of domestic violence. Mr. Dale's then counsel acknowledged that his record was "not stellar." Although Mr. Dale had previously completed a domestic violence program, he reoffended shortly afterwards for the charges pled on June 1, 2000. The sentences giving rise to the revocation hearing on June 2nd arose from violent behavior (unlawful sexual intercourse, assault second degree and reckless endangering). He was adjudicated to be in violation of probation on September 19, 1997, December 23, 1998, and lectured and released through an Operation Safe Streets technical violation on May 7, 1999. He previously served Level 5 time, Level 4 and 3 probation, and is not amenable to a lesser sanction than Level 5. With his record, the domestic violence re-entry program is not appropriate as it is only available for Level 3 probationers. The aggravating circumstances and background were stated on the record on June 2, 2000. I find no reason nor extraordinary circumstances (as referenced in (i) above), to change the Level 5 sentence.
- (iv) Your letter of January 5 states a desire to cross examine the probation officer for bias. Her memorandum of December 13, 2000, was requested by me and provided to the parties for comment. It merely confirms his record outlined at the revocation hearing. Mr. Dale is solely responsible for that - not the probation officer. Rule 35(b) is not the forum for further hearing in these circumstances.

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- (v) *Sua sponte*, however, I am changing the lead sentence in Criminal Action 95-11-0177 under Rule 36. On June 2, I imposed a one (1) year sentence on that charge - not a two (2) year one. A corrected order is attached along with a letter received from Mr. Dale filed on January 3, 2001, that also is repetitive in nature.

**IT IS SO ORDERED.**

Very truly yours,

Richard F. Stokes  
Judge

RFS:mrs

Enclosure

cc: Prothonotary  
Melanie Withers, Esquire

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE : Case No. 9511002427  
v. : Cr. Action Nos.  
 : S95-11-0177  
RODNEY DALE : S95-11-0180  
 : S96-05-0414  
DOB: 05/17/74 :  
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**CORRECTED ORDER**

**NOW**, this 24th day of January, the Order dated June 2, 2000, is corrected to reflect that defendant is to serve one (1) year at Supervision Level 5, as follows:

**As to S95-11-0177:**

Effective June 2, 2000, defendant is placed in the custody of the Department of Correction at Supervision Level 5 for a period of one (1) year, including credit for any time previously served.

All other conditions shall remain in full force and effect.

**As to S95-11-0180 and S96-05-0414:**

The sentence imposed on June 2, 2000, shall remain in full force and effect.

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Richard F. Stokes, Judge