

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)
)
 v.) ID. No. 0305001676
)
MARC WILSON,)
)
)
)
 Defendant.)

Date Submitted: March 3, 2005

Date Decided: May 26, 2005

Upon Defendant's Motion for Reduction of Sentence - DENIED

ORDER

Marsha White, Esquire, Department of Justice, Carvel State Office Building, 820 North French Street, Wilmington, Delaware 19801 for the State of Delaware.

Joe Hurley, Esquire, 1215 King Street, Wilmington, Delaware 19801, counsel for the defendant.

JURDEN, J.

This matter is presently before the Court on the defendant's motion for reduction of sentence. For the reasons that follow, the motion is **DENIED**.

1. On July 14, 2003, the Grand Jury charged Marc Wilson (hereinafter "Defendant") with Attempted Murder in the First degree. On October 27, 2003, the State altered its decision to proceed against the Defendant on that charge and subsequently charged the Defendant with Reckless Endangering First degree, Assault Third degree and Terroristic Threatening. The Defendant pled guilty to Reckless Endangering First degree and the remaining charges were dismissed. The Court ordered a presentence investigation and on January 30, 2004, sentenced the Defendant to five years at Level V, suspended after three years and six months, for one year at Level IV, work release, suspended after six months at Level IV work release, for six months at Level III. The Defendant filed a motion for reduction of his sentence, arguing primarily that his sentence is disproportionate to other sentences given to similarly situated defendants.

2. This case arises from an altercation in May 2003 between the Defendant and his wife, Patricia Wilson (hereinafter "Victim"). During this altercation, the Defendant threw the Victim to the kitchen floor, straddled her, beat and strangled her until she lost unconsciousness. The Defendant then fled the house leaving the couple's two minor sons asleep upstairs and his wife lying unconscious in a pool of blood on the kitchen floor. Eventually, the Victim regained consciousness, and, not knowing the whereabouts of the Defendant, wandered outside where a passing neighbor spotted her and called for help.

3. A person is guilty of Reckless Endangering First degree when "the person recklessly engages in conduct which creates a substantial risk of death to another person."¹ This crime is a Class E violent felony, punishable by up to five years at Level V.² The presumptive sentence is up to fifteen months at Level V.³ Here, the Court sentenced the Defendant to three years and six months at Level V, a sentence that falls squarely within the sentencing guidelines.

¹ 11 Del. C. § 604.

² See Del. Sent'g Accountability Comm. 2005 Benchbook at 45.

³ *Id.*

4. In support of his motion, the Defendant argues, *inter alia*, that the Court's sentence was "disproportionate, given the lack of criminal history of the defendant...the medical 'nightmare' [the Defendant] has experienced since his incarceration" and that the Victim's "'performance' at sentencing was dramatized."⁴ The Defendant also argues that his participation in treatment programs post-conviction should be taken into consideration. The Defendant contends that all of these factors combined justify a reduction in his sentence. The Court disagrees.

5. It does not logically follow, from the fact that defendants in other Reckless Endangering First cases have been sentenced to less Level V time than the Defendant in this case, that the Defendant's sentence should be reduced to be in accord with those sentences. The sentences imposed on other defendants in Reckless Endangering First cases, do not serve as "guidelines" or parameters for future sentencing purposes. Every case is different. When sentencing, the Court must take into account the particular and unique facts and circumstances of the case before it. These include, but are not limited to the nature of the crime, the degree of violence, cruelty or maliciousness involved, the perpetrator's past conduct and, of course, the impact on the victim. The Defendant's conduct here was cruel, violent and life threatening. The Defendant, who is six feet tall and weighs 190 pounds, threw the 125 pound Victim to the ground, in her own home, while their two children slept upstairs, straddled her so as to immobilize her and screaming, "[y]ou're going to die now, fucking bitch," strangled her until she lost consciousness.

6. Prior to this incident, the Defendant had a well-established pattern of abusive conduct toward the Victim. The Defendant admits that he is an alcoholic and that he was a daily drinker. The Defendant also admits that on two prior occasions he flipped tables over during heated arguments with the Victim and even poked a hole in one of her car tires. This aggressive behavior escalated into physical violence in October 2002 when, outside by their backyard pool, the Defendant went "after her...tackled her, placing his hands on her shoulders from behind, knocking the chair over."⁵

7. The Court agrees with the Defendant that, since this event has occurred, he has taken his mandatory treatment and counseling seriously and, from the record, appears to be progressing in

⁴ See D.I. 35.

⁵ Defendant's Submission dated January 21, 2004 at App. C.

those endeavors. However, the Court does not view the Defendant's participation in mandatory treatment programs as grounds for a reduction in sentence. They simply constitute part of the sentence the Court imposed in an attempt to rehabilitate the behavior that lead to the criminal acts. By Court order, the Defendant is *supposed* to be an active participant in these programs. If the Defendant is truly as successful in these programs as he alleges, that constitutes further proof of the effectiveness of the sentence as imposed and the Court believes it would not serve his best interests, society's best interests, or the victim's best interests to interrupt that progress. Indeed, at one point, the Defendant himself acknowledged that incarceration is an appropriate sentence for his conduct.⁶

8. Finally, despite the Defendant's allegations, this Court finds the Victim's demeanor both at sentencing and the hearing on this motion to be genuine. The Victim appeared to the Court to be genuinely frightened. As she spoke, her voice frequently cracked, she was physically shaking and she broke into tears at several points in her testimony. The Court finds nothing in the record to support the Defendant's contention that the Victim was "performing" for the Court's benefit and to the Defendant's detriment. In fact, the Defendant himself conceded, before sentencing, "I cannot fathom the amount of fear and betrayal my wife must feel...I thank God that the outcome was not any worse. I pray that they will be safe now that I won't be there...."⁷

9. Based on the reasons set forth above, the Court finds that a reduction in the Defendant's sentence is not appropriate. The Defendant's sentence is well within the statutory guidelines and the Court believes the sentence is appropriate based upon the particular circumstances in this case. The Defendant's motion for reduction of sentence, therefore, is **DENIED**.

IT IS SO ORDERED.

⁶ See D.I. 19 (stating "Patty, don't worry about the criminal stuff, if I have to go to jail, I'll come out a better person because I'm getting better already. I still feel like maybe I should be there."); *see also* Defendant's Submission dated January 21, 2004 at App. B. ("My stance remains, that if I am to go to jail for this crime, that is the price I have to pay for the crime committed.").

⁷ See Defendant's Submission dated January 21, 2004 at App. E. (emphasis in original)..

Judge