

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,

v.

JAMIL S. BAILEY,

Defendant.

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I.D. No. 1102005007

Date Submitted: August 25, 2017

Date Decided: October 3, 2017

ORDER

Upon consideration of Defendant's Motion for Modification of Sentence;¹ Superior Court Criminal Rule 35(b);² the facts, arguments, and legal authorities set forth in Defendant's Motion; statutory and decisional law; and the record in this case, **IT APPEARS THAT:**

1. On June 8, 2017, the Court sentenced Bailey on a Violation of Probation to 5 years at supervision Level V, with credit for 9 days previously served, suspended for 7 months at supervision Level IV, hold at supervision Level V until space is available at supervision Level IV, no probation to follow.³

¹ D.I. 73.

² Super. Ct. Crim. R. 35(b).

³ D.I. 72.

The conviction for which he was on probation was Possession with Intent to Deliver.⁴

2. Bailey now asks that the Court reduce his Level IV time so he can start a new job.⁵
 3. A motion for modification of partial confinement or probation is not subject to the ninety-day limitation applicable to a motion for reduction of imprisonment.⁶ Pursuant to 11 *Del. C.* § 4333, any probation or suspension of sentence may be terminated by the court at any time.⁷
 4. Relief under Rule 35(b) is a discretionary function of this Court. Although the Rule does not set forth specific criteria which must be met before the Court may grant a Rule 35(b) motion, common sense dictates that the Court may modify a sentence if present circumstances indicate that the previously imposed sentence is no longer appropriate.⁸
 5. The instant Motion is Bailey's fourth request for sentence modification.⁹
- Pursuant to Criminal Rule 35(b), the Court will not consider repetitive

⁴ D.I. 34. Bailey was sentenced to 15 years at supervision Level V with credit for 461 days previously served, suspended after 4 years at supervision Level V for 12 years at supervision Level IV work release, suspended after 9 months at supervision Level IV for 2 years at supervision Level III, hold at supervision Level V until space is available at supervision Level IV Work Release.

⁵ D.I. 73.

⁶ *State v. Redden*, 111 A.3d 602, 609 (Del. Super. Ct. 2015).

⁷ *Id.* at 605.

⁸ *State v. Johnson*, 2006 WL 3872849, at *3 (Del. Super. Dec. 7, 2006).

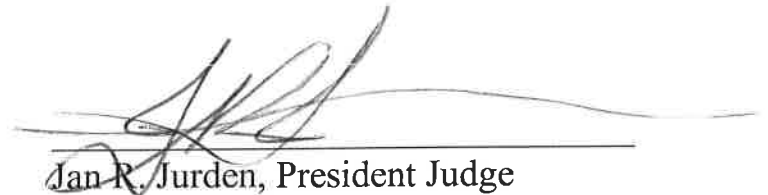
⁹ See D.I. 35, 37, 39, 73.

requests for reduction or modification of sentence.¹⁰ Unlike the 90-day jurisdictional limit with its “extraordinary circumstances” exception, the bar to repetitive motions has no exception. Instead, this bar absolutely “prohibits repetitive requests for reduction of sentence.”¹¹

6. Bailey was sentenced to 5 years at supervision Level V, suspended for 7 months at supervision Level IV because he violated his probation within one week of being sentenced on a prior Violation of Probation.¹²
7. The sentence at issue 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 reduction or modification of this sentence.

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

IT IS SO ORDERED.



Jan R. Jurden, President Judge

Original to Prothonotary:

cc: Jamil Bailey (SBI# 00595074)

¹⁰ *State v. Culp*, 2016 WL 7176720, at *2 (Del. Dec. 8, 2016) (“A motion is ‘repetitive’ as that term is used in Rule 35(b) when it is preceded by an earlier Rule 35(b) motion, even if the subsequent motion raises new arguments.”); Super. Ct. Crim. R. 35(b).

¹¹ *Thomas v. State*, 2002 WL 31681804, at *1 (Del. 2002). See also *Jenkins v. State*, 2008 WL 2721536, at *1 (Del. 2008) (explaining that Rule 35(b) “prohibits the filing of repetitive sentence reduction motions.”); *Morrison v. State*, 2004 WL 716773, at *2 (Del. 2004) (explaining that the “motion was repetitive, which also precluded its consideration by the Superior Court.”).

¹² D.I. 72.