

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE,	)	
	)	
	)	
v.	)	I.D. No. 1901000746
	)	
	)	
ALEX S. KAPP,	)	
	)	
Defendant.	)	

**ORDER**

**AND NOW TO WIT**, this 15<sup>th</sup> day of January 2020, upon consideration of Alex S. Kapp’s (“Defendant”) Motion for Modification of Sentence, the sentence imposed upon the Defendant, and the record in this case, it appears to the Court that:

1. On February 20, 2019, Defendant pleaded guilty to two counts of Burglary Second Degree (Class D Felony).<sup>1</sup> On August 30, 2019, Defendant was sentenced<sup>2</sup> to two consecutive Level V sentences requiring the successful completion of Level V Key and one year at Level V, followed by six months at Level IV Crest, held at Level V until space is available, and two years at Level III TASC.<sup>3</sup>

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<sup>1</sup> Case Review Plea Hearing: Pled Guilty/ Presentence, *State of Delaware v. Alex S. Kapp*, Crim. Id. No. 1901000746, D.I. 4, (Del. Super. Ct. Feb. 20, 2019) [hereinafter “Def.’s Plea”].

<sup>2</sup> Sentencing Calendar: Defendant Sentences, *State of Delaware v. Alex S. Kapp*, Crim. Id. No. 1901000746, D.I. 7, (Del. Super. Ct. Aug. 30, 2019).

<sup>3</sup> For the first count of Burglary Second Degree, Defendant received eight years at Level V Key, suspended after successful completion, for seven years at Level IV Crest, suspended after six months at Level IV Crest, for two years at Level III TASC, held at Level V until spaced is available at Level IV Crest. For the second count of Burglary Second Degree, Defendant

This includes a minimum mandatory sentence of two years – one-year minimum mandatory for each count of Burglary Second Degree.

2. On October 2, 2019, Defendant filed this request under Superior Court Criminal Rule 35(b)<sup>4</sup> to modify his Level IV sentence.<sup>5</sup> Defendant requests that this Court modify his sentence of six months at Level IV Crest, to four months of Home Confinement and to be held at Level III.<sup>6</sup> In support of his motion, Defendant states the following grounds for relief: (1) “Employment[;]” (2) “Detainer in Pennsylvania” – Defendant indicates that he “will be extradited immediately after completing [his Level V] Key [sentence]” to be held in PA; and (3) “Family”.<sup>7</sup>

3. The sentence in Defendant’s case was imposed pursuant to a Plea Agreement between the State and Defendant.<sup>8</sup> After an appropriate colloquy, the Court addressed Defendant in open court pursuant to Superior Court Criminal Rule 11(c)(1) and determined that he understood the nature of the charge to which the plea was offered. Defendant fully acknowledged in open court that the range of possible penalties included the sentence that was imposed by the Court in this case.

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received eight years at Level V, suspended after one year at Level V, for two years at Level III, probation to serve concurrently. *See* Sentence: ASOP Order, *State of Delaware v. Alex S. Kapp*, Crim. Id. No. 1901000746, D.I. 6, (Del. Super. Ct. Aug. 30, 2019).

<sup>4</sup> DEL. SUPER. CT. CRIM. R. 35(b).

<sup>5</sup> Defendant’s Motion for Modification of Sentence, *State of Delaware v. Alex S. Kapp*, Crim. Id. No. 1901000746, D.I. 8, (Del. Super. Ct. Oct. 2, 2019) [hereinafter “Def.’s Mot.”].

<sup>6</sup> *See id.* at pages 2-3.

<sup>7</sup> *Id.* at page 2.

<sup>8</sup> *See* Def.’s Plea Hearing.

4. Under Superior Court Criminal Rule 35(b), “[t]he Court may . . . reduce the . . . term or conditions of partial confinement or probation, at any time.”<sup>9</sup> Defendant is not time-barred because he does not seek to modify or reduce his Level V sentence, but rather requests a modification of his Level IV time.

5. Where the Department of Correction (DOC) has requested that courts refrain from sentencing defendants to specific treatment programs within DOC, the Court defers to DOC to determine the appropriateness of the Level IV Crest sentence. The sentence is modified to six months at Level IV DOC Discretion, whereby DOC may determine the appropriate placement. The remainder of Defendant’s sentence is appropriate for all the reasons stated at the time of sentencing.

**IT IS SO ORDERED** that Defendant’s Motion for Modification is **GRANTED, in part** and **DENIED, in part**.



Vivian L. Medinilla  
Judge

oc: Prothonotary  
cc: Department of Justice  
Investigative Services  
Defendant

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<sup>9</sup> SUPER. CT. CRIM. R. 35(b).