

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)	
)	
v.)	ID Nos. 2011011942,
)	1803009090,
TYION ROBINSON,)	1809005953
)	
Defendant.)	
)	

Date Submitted: January 30, 2024

Date Decided: March 18, 2024

ORDER

Upon consideration of Defendant Tyion Robinson’s (“Robinson”) Letter Motion for Sentence Modification (“Motion”),¹ Superior Court Criminal Rule 35(b), statutory and decisional law, and the record in this case, **IT APPEARS THAT:**

(1) On May 7, 2018, Robinson was indicted in the case ending in 9090 (“the A Case”).² On September 24, 2018, Robinson pled guilty in the A Case to Robbery Second Degree (IN18-04-0203)³ and was sentenced as follows: for Robbery Second Degree, 5 years at Level V suspended immediately for 2 years at Level IV DOC Discretion, suspended after 6 months for 1 year at Level III.⁴

(2) On November 5, 2018, Robinson was indicted in the case ending in

¹ D.I. 29A. Robinson submitted a letter to the Court asking for his Level V VOP sentences in the A case and B case to run concurrently.

² D.I. 5A.

³ D.I. 16A.

⁴ D.I. 17A.

5953 (“the B Case”).⁵ On September 9, 2019, Robinson pled guilty in the B Case to Assault Second Degree (IN18-09-1114) and Robbery Second Degree (IN18-09-1112),⁶ and was sentenced as follows: for Assault Second Degree, 8 years at Level V, suspended for 1 year at Level III; and for Robbery Second Degree, 5 years at Level V, suspended after 2 years for 1 year Level III GPS.⁷

(3) On August 5, 2022, Robinson was found in violation of probation (“VOP”)⁸ on Robbery Second Degree in the A Case and Assault Second Degree and Robbery Second Degree in the B Case.⁹

(4) Robinson’s VOP sentence in the A Case is as follows: Robbery Second Degree VOP (VN18-04-0203-01), 5 years at Level V suspended after 6 months, for 1 year Level III GPS.¹⁰

(5) His VOP sentence in the B Case is as follows: Assault Second Degree VOP (VN18-09-1114-01), 8 years at Level V, suspended after 6 months, for 1 year Level III GPS; and for Robbery Second Degree VOP (VN18-09-1112-01), 3 years at Level V, suspended for 1 year Level III GPS.¹¹

(6) Robinson filed a Motion for Sentence Modification on October 26,

⁵ D.I. 6B.

⁶ D.I. 36B.

⁷ D.I. 37B.

⁸ At that time, Robinson was serving his Level IV sentence in the A Case and scheduled to serve his Level III GPS sentence in the B Case.

⁹ D.I. 25A, D.I. 42B.

¹⁰ D.I. 26A. The Case No. 2011011942 refers to this VOP sentence.

¹¹ D.I. 43B.

2023.¹² By Order dated November 21, 2023, the Court denied Robinson’s Motion for Sentence Modification as untimely under Rule 35(b).¹³

(7) On January 30, 2024, Robinson filed the instant Rule 35(b) Motion for Sentence Modification, arguing that the Court applied the law incorrectly and the Rule 35(b) time-bar does not apply to his sentence.¹⁴ In support of his Motion, Robinson cites 11 *Del. C.* § 3901(d), arguing,

[u]nder the statute, a defendant may request a sentence modification to run certain criminal offenses concurrently at the court’s discretion. Some offenses are excluded from being run concurrently However, the offenses on which defendant is sentenced do not appear on the list of exclusionary offenses.¹⁵

(8) Rule 35(b) governs motions for modification or reduction of sentence.¹⁶ “Under Rule 35(b), a motion for sentence modification must be filed within ninety days of sentencing, absent a showing of ‘extraordinary circumstances.’”¹⁷ Rule 35(b) also mandates that “[t]he [C]ourt *will not* consider repetitive requests for

¹² D.I. 44A, D.I. 27B. In his October 26, 2023 Motion for Sentence Modification, Robinson asked to modify his sentences by either “tak[ing] 6 months off the 1 year [Level V time] . . . or the whole year for completion of [] [a] 90 day Program.” *Id.*

¹³ D.I. 45A, D.I. 28B.

¹⁴ D.I. 46A, D.I. 29B.

¹⁵ *Id.*

¹⁶ Super. Ct. Crim. R. 35(b).

¹⁷ *Croll v. State*, 2020 WL 1909193, at *1 (Del. Apr. 17, 2020) (TABLE) (affirming the Superior Court’s denial of a motion for modification of sentence where the motion was repetitive and filed beyond the 90-day limit); see *Hewett v. State*, 2014 WL 5020251, at *1 (Del. Oct. 7, 2014) (“When [] a motion for reduction of sentence is filed within ninety days of sentencing, the Superior Court has broad discretion to decide whether to alter its judgment.”).

reduction of sentence.”¹⁸ “[T]his bar is absolute and flatly ‘prohibits repetitive requests for reduction of sentence.’”¹⁹

(9) Under 11 *Del. C.* § 3901(d), “the court shall direct a sentence whether the sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently or consecutively with any other sentence of confinement imposed on such criminal defendant.”²⁰ The statute then proceeds to list crimes that cannot be run concurrently.²¹ This statute is in reference to the initial sentence, not subsequent modifications.²²

(10) While it is true that Robinson’s crimes do not appear on the list of those that cannot be run consecutively, Rule 35(b) is the rule under which a sentence may be modified or reduced.²³ Thus, any request regarding a sentence modification of Level V time is subject to the time-bar imposed by Rule 35(b) absent extraordinary circumstances.

(11) For the reasons stated in the Court’s November 21, 2023 Order, Robinson’s Motion for Sentence Modification is denied as untimely under the Rule

¹⁸ Super. Ct. Crim. R. 35(b) (emphasis added).

¹⁹ *State v. Redden*, 111 A.3d 602, 609 (Del. Super. 2015) (quoting *Thomas v. State*, 2002 WL 31681804, at *1 (Del. Nov. 25, 2002)).

²⁰ 11 *Del. C.* § 3901(d).

²¹ *Id.*

²² *Id.*

²³ *Jones v. State*, 2003 AL 21210348, at *1 (Del. May 22, 2003) (“There is no separate procedure, other than that which is provided under Superior Court Criminal Rule 35, to reduce or modify a sentence.”).

35(b).²⁴

NOW, THEREFORE, IT IS HEREBY ORDERED that Robinson's Letter Motion for Sentence Modification is **DENIED**.

/s/ Jan R. Jurden
Jan R. Jurden, President Judge

Original to Prothonotary

cc: Kristina Bensley, DAG
Tyion Robinson (SBI# 00801096)

²⁴ D.I. 45A.