EFiled: Jun 27 2016 03:33PM EDT
Filing ID 59197965
Case Number 249,2016

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	
Plaintiff-Below,	)	
Appellant,	)	
	)	
v.	)	No. 249, 2016
	)	
	)	
CATHERINE CULP,	)	
	)	
Defendant-Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S OPENING BRIEF

Sean P. Lugg (No. 3518)
Deputy Attorney General
Delaware Department of Justice
Carvel State Office Building
820 North French Street, 7th Floor
Wilmington, Delaware 19801
(302) 577-8500

Dated: June 27, 2016

TABLE OF CONTENTS

PAGE

TABLE OF CITATIONS

CASES **PAGE**

STATUTES AND RULES

OTHER AUTHORITIES

NATURE AND STAGE OF THE PROCEEDINGS

On July 29, 1998, the Delaware State Police arrested Catherine Culp. DI 1.[1] On September 14, 1998, a Kent County grand jury indicted Culp on one count each of murder in the first degree and possession of a firearm during the commission of a felony ("PFDCF"). DI 2. On September 24, 1998, the State informed the Superior Court of its intent to seek the death penalty upon conviction. DI 7. On December 8, 1999, following a two-week trial, a Superior Court jury found Culp guilty of both offenses. DI 76. The penalty hearing followed. DI 83. The jury unanimously found the existence of a statutory aggravating factor, and then unanimously concluded that the aggravating factors did not outweigh the mitigating factors. DI 83. On December 17, 1999, the Superior Court imposed a life sentence for the first degree murder charge, and five years of incarceration for PFDCF. DI 85. Culp appealed. DI 90.

On February 21, 2001, this Court concluded that the Superior Court improperly excluded Culp's statements made to a 911 dispatcher.[2] The Superior Court judgment was reversed and the case was remanded to the trial court.[3]

---

[1] "DI__" refers to item numbers on the Delaware Superior Court Criminal Docket in *State v. Culp*, I.D. No. 9807019438. A1-17.

[2] *Culp v. State*, 766 A.2d 486, 491 (Del. 2001).

[3] *Id.*

On July 30, 2001, a Superior Court jury found Culp guilty of murder in the second degree, a lesser included offense of first degree murder, and PFDCF. DI 125. On August 1, 2001, the Superior Court sentenced Culp to a total of 25 years of incarceration followed by decreasing levels of probation. DI 126. On January 27, 2003, this Court affirmed Culp's appeal of her 2001 convictions and sentence.[4]

On April 22, 2003, Culp filed her first motion for modification of sentence. DI 141. The Superior Court denied this motion on May 29, 2003. DI 144. On March 11, 2009, Culp moved for postconviction relief. DI 147. The Superior Court denied this motion on July 13, 2009. DI 154. Culp filed a second motion for modification of sentence, captioned a "Motion for Modification \ or Consideration for 4217," on October 5, 2015. DI 161. The Superior Court treated the application as a "Motion for Review of Sentence . . . filed pursuant to Superior Court Criminal Rule 35(b)."[5] On April 18, 2016, the Superior Court granted Culp's motion for modification, finding "that Culp has demonstrated beyond cavil extraordinary circumstances, in the clearest manner that Rule 35(b) could conceive, for a reduction of her sentence."[6] DI 167. On April 25, 2016, the State moved for reargument. DI 168. The Superior Court denied the State's motion the following day. DI 169. The

[4] *Culp v. State*, 2003 WL 193536 (Del. Jan. 27, 2003); DI 140.

[5] *State v. Culp*, 2016 WL 3191131 (Del. Super. Apr. 18, 2016).

[6] *Id.* at *3.

State filed a timely Notice of Appeal of the Superior Court's April 18, 2016 order. This is the State's opening brief.

SUMMARY OF THE ARGUMENT

I. The Superior Court abused its discretion by failing to follow the plain language of Superior Court Criminal Rule 35(b) and the case law interpreting that rule when it granted Culp's repetitive motion for sentence modification. First, Rule 35 provides that the Superior Court "will not consider repetitive requests for reduction of sentence." Here, the Superior Court disregarded the plain language of its rule to address the merits of Culp's second motion for modification. Second, the Superior Court, contrary to this Court's instruction, concluded that Culp's program participation and rehabilitative efforts constitute "extraordinary circumstances," thus permitting consideration of her untimely second motion for modification. The Superior Court failed to apply an established procedural bar, and improperly addressed the merits of an untimely motion for reduction of sentence.

STATEMENT OF FACTS[7]

On July 28, 1999, the victim, Lee B. Hicks, attended a family barbeque with his girlfriend, Catherine Culp. Hick's daughter held the barbeque at her home. During the party, Hicks continuously dropped his wallet. At the suggestion of Hicks' daughter and his niece, Culp took possession of the wallet. Thereafter, Hicks and Culp began to argue because Culp allegedly indicated she wanted to have sex with Hicks' grandson. This comment angered Hicks and he told Culp that he was going to take her back to Florida and "did not want anything else to do with her." It appears that Hicks and Culp kept their distance from each other following this incident. As the party concluded during the evening hours, Hicks suggested everyone return to his home in Felton, Delaware. Thereafter, many of those who attended the barbeque returned to Hicks' residence. Upon returning to his residence, Hicks realized he did not have his wallet. He was told that Culp had the wallet. Hicks asked Culp to return the wallet, but she refused. An argument ensued, and after repeated requests, Culp returned the wallet. No other incidents between Culp and Hicks took place. All the guests in attendance departed shortly after midnight. Culp and Hicks remained at his residence.

[7] The facts are taken verbatim from this Court's Order affirming Culp's conviction. *Culp v. State*, 2003 WL 193536, at *1-*2.

At approximately 1:00 a.m., Culp frantically banged on the door of Kimberly and Corinthian Cuffee, who lived a few doors away from the Hicks residence. When Mr. Cuffee opened the door Culp stated, "I need help ... he is hurt, I need somebody to come call 911." Culp entered the Cuffee residence and Mr. Cuffee dialed 911. The 911 dispatcher requested that Mr. Cuffee give the telephone to Culp. When the dispatcher asked what happened, Culp replied, "He told me to give him his gun, and I gave it to him. And the gun went off and it shot him in the back." The dispatcher responded, "You shot him in the back?" Culp replied, "He's bleeding. Oh, God, Please."

Trooper Robert Daddio arrived at the Cuffee residence at 1:36 a.m. As Trooper Daddio entered the Cuffee's driveway, Culp ran toward him frantically pointing toward the Hicks residence and yelling "over there, over there." According to Trooper Daddio, Culp appeared hysterical and also stated, "He is in there, he is dead." Inside the residence, Trooper Daddio found Hicks lying dead in his bed. It was later determined that Hicks died as a result of a single, close range, gunshot wound.

Culp returned to the Cuffee residence and remained there while the officers conducted their investigation. During this time, Mrs. Cuffee indicated that Culp said: "It was an accident, it was an accident. I grabbed a towel and I tried to stop the bleeding, but it wouldn't stop, you know, he wouldn't stop bleeding." Mrs. Cuffee

reported that Culp gave conflicting accounts about the cause of the shooting. According to Mrs. Cuffee, Culp first stated "He asked me for the gun, I handed him the gun, he laid it on the bed or something, I turned the light out and he rolled over and it went off." Mrs. Cuffee testified that Culp later told her that she "handed him the gun, he put it on the dresser, and then I left the room."

Lieutenant Joseph Huttie arrived at the Cuffee residence at approximately 1:44 a.m. After Mrs. Cuffee woke Culp, Lt. Huttie asked Culp what happened. Culp responded that "Mr. Hicks had asked me to retrieve a handgun from on top of the bureau . . .," she gave the weapon to Hicks, "turned off the light, closed the door, and the gun accidentally went off." Culp told Lt. Huttie she was asked to retrieve the gun "for the purpose of protecting the children from it, because the kids earlier in the day had been playing with that handgun." Huttie stated that Culp said "after the shooting, she went back in the room, saw that he was bleeding ... took the gun off the bed, put it on the floor, and then tended to his injury." At approximately 2:20 a.m., Trooper Blades spoke with Culp at the Cuffee residence and Culp stated that "it was an accident. I shot him, but it was an accident." Culp was then taken to Delaware State Police Troop 3, where tests were conducted. At this point, she was considered a suspect.

The Assistant State Medical Examiner performed an autopsy on the victim and determined that cause of death was a massive hemorrhage due to a gunshot

wound that hit Hicks' aorta, the body's largest artery, as well as his heart. The Police used a gunshot residue kit to check for gunpowder on the defendant's hands, as well as the victim's. Both tests were negative.

I. THE SUPERIOR COURT ABUSED ITS DISCRETION BY GRANTING CULP'S UNTIMELY, REPETITIVE MOTION FOR SENTENCE MODIFICATION.

Question Presented

Whether the Superior Court abused its discretion by failing to find Culp's repetitive motion for sentence modification to be procedurally barred, and then granting the motion finding the delay in filing to be supported by extraordinary circumstances. The State preserved this question in the trial court as reflected in the Superior Court's opinion.[8]

Standard and Scope of Review

This Court reviews the Superior Court's decision to grant or deny a motion for modification of sentence for an abuse of discretion.[9] "An abuse of discretion occurs when a court has exceeded the bounds of reason in view of the circumstances or so ignored recognized rules of law or practice to produce injustice."[10]

Merits of the Argument

Superior Court Criminal Rule 35 provides that the Superior Court "may reduce a sentence of imprisonment on a motion made within 90 days after the

---

[8] *State v. Culp*, 2016 WL 3191191, at *1 (Del. Super. Apr. 18, 2016).

[9] *State v. Diaz*, 2015 WL 1741768, *2 (Del. Apr. 15, 2015) (citing *State v. Lewis*, 797 A.2d 1198, 1202 (Del. 2002)); *Hickman v. State*, 2003 WL 22669335, at *1 (Del. Nov. 10, 2003) (citing *Shy v. State*, 246 A.2d 926, 927 (Del. 1968)).

[10] *Harper v. State*, 970 A.2d 199, 201 (Del. 2009) (citing *Culp v. State*, 766 A.2d 486, 489 (Del. 2001)).

sentence is imposed."[11] Motions made more than 90 days after sentencing will only be considered "in extraordinary circumstances or pursuant to 11 *Del. C.* § 4217."[12] Repetitive requests "will not" be considered by the Superior Court.[13] Here, the Superior Court erred by (1) considering Culp's repetitive request for modification, and (2) finding that Culp's program participation constitutes "extraordinary circumstances" justifying the 14-year delay in filing her second motion.

A. Repetitive requests for reduction of sentence will not be considered[14]

Before considering the merits of a motion for sentence reduction, the Superior Court addresses any applicable procedural bars.[15] Adherence to this process "protects the integrity of the Court's rules and the finality of its sentencing judgments."[16] "Addressing the merits of a case that does not meet procedural

---

[11] Super. Ct. Crim. R. 35(b); *Jones v. State*, 2003 WL 356788, at *1 (Del. Feb. 14, 2003) ("Superior Court Criminal Rule 35 provides that the Superior Court may consider a motion to reduce a sentence only if such motion is made within ninety days after the sentence is imposed or upon a showing of extraordinary circumstances. The Superior Court may not consider repetitive requests for reduction of sentence.").

[12] Super. Ct. Crim. R. 35(b). *See Sample v. State*, 2012 WL 193761, at *1 (Del. Jan. 23, 2012) ("Under Rule 35(b), the Superior Court only has discretion to reduce a sentence upon motion made within 90 days of the imposition of sentence, unless 'extraordinary circumstances' are shown."). Section 4217 of Title 11 provides a procedure whereby the Department of Correction ("DOC") may petition for an offender's sentence modification; however, DOC has the sole discretion to file such a petition. *Woods v. State*, 2003 WL 1857616, at *1 (Del. Apr. 8, 2003).

[13] Super. Ct. Crim. R. 35(b).

[14] *Id.*

[15] *State v. Redden*, 111 A.3d 602, 606 (Del. Super. 2015).

[16] *Id.*

requirements effectively renders [Superior Court] procedural rules meaningless."[17] Pursuant to Rule 35, the Superior Court "will not consider repetitive requests for reduction of sentence."[18] "Unlike the 90-day jurisdiction limit with its 'extraordinary circumstances' exception, the bar to repetitive motions has no exception."[19] This absolute bar prohibits the Superior Court from considering a second motion for sentence modification.[20]

The Superior Court failed to consider its unequivocal procedural bar against repetitive motions. Culp first moved for modification of sentence on April 22, 2003, DI 141, and the Superior Court denied that motion. DI 144. When Culp moved for modification a second time on October 5, 2015, the Superior Court concluded that Culp's motion was "filed pursuant to Superior Court Criminal Rule 35(b)," acknowledged the motion's untimeliness, and proceeded to assess the existence of "extraordinary circumstances."[21] The court failed to consider the express prohibition of repetitive motions for modification of sentence found within the plain language of Rule 35. By failing to consider this procedural bar contained within its rules, the Superior Court produced an injustice by prematurely releasing a convicted killer.

---

[17] *Id.* (quoting *State v. Reed*, 2014 WL 7148921, at *3 (Del. Super. Dec. 16, 2014)).

[18] Super. Ct. Crim. R. 35(b).

[19] *Redden*, 111 A.3d at 608.

[20] *Id.* at 609.

[21] *Culp*, 2016 WL 3191131, at *1.

Rule 35 provides an offender the opportunity to timely request the sentencing judge reconsider the propriety of its initial sentence.[22] Culp exercised this opportunity by moving for modification of her sentence in 2003. DI 141. Because her case was specially assigned to a Superior Court judge, DI 3, who presided over both of her trials, DI 76, DI 125, and imposed her sentence, DI 126, that same judge addressed her first motion for modification. DI 144. That judge was afforded the opportunity, in 2003, to consider the propriety of the sentence and assess whether the court's judgment should be altered. That judge chose not alter the judgment. DI 144.

Now, fourteen years after the imposition of sentence, and without the benefit of presiding over Culp's trials, the Superior Court granted Culp's repetitive and untimely motion for reduction of her sentence. The 1989 Truth-in-Sentencing Act modified Delaware's criminal sentencing paradigm by "assuring that the public, the State and the court will know that the sentence imposed by the court will be served by the defendant and that the defendant will know what the actual effect of the sentence will be."[23] The Superior Court's ability to modify a criminal sentence pursuant to Rule 35 must be read "*in pari materia* with the Truth-in-Sentencing Act

---

[22] *Redden*, 111 A.3d at 606-07. ("The reason for [the 90-day rule] is to give a sentencing judge a second chance to consider whether the initial sentence is appropriate") (quoting *State v. Remedio*, 108 A.3d 326, 331 (Del. Super. 2014)); *see also Johnson v. State*, 234 A.2d 447, 448 (Del. 1967).

[23] *State v. Tollis*, 126 A.3d 1117, 1119 (Del. Super. 2016) (quoting 67 Del. Laws c. 130, §2 (1989)).

and interpreted in a manner consistent with their own express language and history."[24] The Superior Court's decision to entertain – and grant – a repetitive, untimely motion for reduction is inconsistent with the plain language of Rule 35 and fails to provide the public, the State, the court, and the defendant any assurance of what this sentence actually will be. Rule 35's prohibition of repetitive motions exists to prevent the abuse of discretion that occurred here.

[24] *Tollis*, 126 A.2d at 1120.

B. Program participation does not create "extraordinary circumstances"

"It is well settled that efforts at rehabilitation do not constitute 'extraordinary circumstances' justifying a sentence modification beyond the 90-day limit."[25] The Superior Court's conclusion that Culp "has demonstrated beyond cavil extraordinary circumstances, in the clearest manner that Rule 35(b) could conceive, for a reduction of her sentence"[26] is inconsistent with Delaware Supreme Court precedent. A defendant seeking a reduction of sentence beyond ninety days has a "heavy burden" to prove the existence of "extraordinary circumstances."[27] This burden ensures the sentencing court's interest in upholding the finality of its judgment.[28] Even assuming the Superior Court was justified in ignoring its bar against repetitive motions, Culp failed to establish "extraordinary circumstances" to excuse her untimely motion.

"Although not defined by statute, Black's Law Dictionary defines 'extraordinary circumstances' as '[a] highly unusual set of facts that are not commonly associated with a particular thing or event.'"[29] Former Delaware Supreme Court Chief Justice Steele "aptly described 'extraordinary circumstances'

---

[25] *Morgan v. State*, 2012 WL 3115539, *1 (Del. Jul. 31, 2012) (citing *Boyer v. State*, 2010 WL 2169511 (Del. May 18, 2010)); *Redden*, 111 A.3d at 607.

[26] *Culp*, 2016 WL 3191131, at *3.

[27] *Diaz*, 2015 WL 174168, at *2.

[28] *Id.*

[29] *Id.* (citing Black's Law Dictionary (10th ed. 2014)).

in the context of a Rule 35 motion as those which 'specifically justify the delay;' are 'entirely beyond a petitioner's control;' and 'have prevented the applicant from seeking the remedy on a timely basis.'"[30] Delaware Supreme Court precedent "supports this definition and illustrates the high burden a defendant must satisfy in order for an untimely Rule 35 motion to be considered by the court."[31] "[A]n inmate's rehabilitative efforts are 'entirely within a petitioner's control'" and fail to meet the definition of "exceptional circumstances."[32]

The Superior Court disregarded this Court's interpretation of "extraordinary circumstances."[33] Rather, the Superior Court concluded that "'extraordinary' must be taken to mean exceptional in character; remarkable."[34] Then, the Superior Court applied its unique view of "extraordinary circumstances" to Culp's activity while incarcerated.[35] While Culp's efforts to better herself while incarcerated are commendable, these efforts were squarely within her control and do not constitute

---

[30] *Diaz*, 2015 WL 175168, at *2 (quoting *State v. Lewis*, 797 A.2d 1198, 1205 Del. 2002) (Steele, J., dissenting)); *see also State v. Remedio*, 108 A.3d 326, 332 (Del. Super. 2014) (citing to same definition of "extraordinary circumstances").

[31] *Diaz*, 2015 WL 174168 at *2. In support of this proposition, this Court cites to its precedent defining the parameters of "extraordinary circumstances" as that phrase is used in Rule 35. *Id.* at *2, n. 9.

[32] *Redden*, 111 A.3d at 608.

[33] *Culp*, 2016 WL 3191131 at *1.

[34] *Id.*

[35] *Id.* at *2.

"extraordinary circumstances" as contemplated by Rule 35.[36] Program participation and similar rehabilitative efforts do not justify a modification of a sentence beyond 90 days.[37] By plainly disregarding its rules of procedure and Supreme Court precedent, the Superior Court abused its discretion.

Interestingly, the Superior Court acknowledged this Court's refusal to accept offenders' positive performance, program participation, or health concerns as "extraordinary circumstances" warranting untimely sentencing modification motions pursuant to Rule 35.[38] But, the court chose to forge its own path based upon its belief that Rule 35 must allow consideration of rehabilitation, regardless of time.[39] The Superior Court's opinion granting Culp's motion reflects an intent to apply the sentence modification procedures found in Title 11, Section 4217 ("Section 4217") through Rule 35. This cannot be done. Rule 35(b) and Section 4217 provide

---

[36] *See Redden*, 111 A.3d at 608.

[37] *Morgan v. State*, 2012 WL 3115539, at *1 (Del. Jul. 31, 2012) (citing *Boyer v. State*, 2010 WL 2169511 (Del. May 18, 2010)); *Redden*, 111 A.3d at 607.

[38] *Culp*, 2016 WL 3191131, at *1-*2. The Superior Court summarized this Court's findings in *Upshur v. State*, 2006 WL 212199 (Del. Jan 27, 2006) (positive things done by Upshur do not amount to "extraordinary circumstances"), *Ketchum v. State*, 2002 WL 1290900 (Del. June 6, 2002) (participation in numerous educational and treatment programs not "extraordinary circumstances"), *Shockley v. State*, 2007 WL 2229022 (Del. Aug. 2, 2007) (allegation that Hepatitis C was not properly treated in prison non "extraordinary circumstances"), and *Triplett v. State*, 2008 WL 802284 (Del. Mar. 27, 2008) (successful completion of Greentree program not "extraordinary circumstances"), yet declined to follow extant precedent.

[39] *Culp*, 2016 WL 3191131, at *2. Importantly, the path chosen by the Superior Court is devoid of legal support. *Id.* at *2-*3.

separate and distinct sentence reduction processes and the Superior Court acted in contravention of established procedures and years of prevailing case law.

Rule 35(b) provides an offender a singular opportunity to request the trial court to reconsider the sentence imposed; moreover, absent exceptional circumstances justifying a delay, this request must be "made within 90 days after the sentence is imposed."[40] On the other hand, "[i]n any case where the trial court has imposed an aggregate sentence of incarceration at Level V in excess of 1 year, the [trial] court shall retain jurisdiction to modify the sentence to reduce the level of custody or time to be served under the provision of [Section 4217]."[41] The Superior Court may modify a sentence where the Department of Correction shows good cause and certifies "that the release of the defendant shall not constitute a substantial risk to the community or the defendant's own self."[42] Good cause includes "rehabilitation of the offender."[43] "'[R]ehabilitation' is defined as the process of restoring an individual to a useful and constructive place in society especially through some form of vocational, correctional, or therapeutic retraining."[44] The

[40] Super. Ct. Crim. R. 35(b).

[41] 11 *Del. C.* § 4217(a).

[42] 11 *Del. C.* § 4217(b).

[43] 11 *Del. C.* § 4217(c).

[44] 11 *Del. C.* § 4217(h).

Superior Court's circumvention of the Section 4217 process was an abuse of discretion.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment below and direct the Superior Court to vacate its April 18, 2016 Opinion modifying Culp's sentence.

/s/Sean P. Lugg
Sean P. Lugg (No. 3518)
Deputy Attorney General
Delaware Department of Justice
Carvel State Office Building
820 N. French Street, 7th Floor
Wilmington, DE 19801
(302) 577-8500

Dated: June 27, 2016

2016 WL 3191131
Only the Westlaw citation
is currently available.
Superior Court of Delaware,
In and for Kent County.

State of Delaware,
v.
Catherine W. Culp, Defendant.

ID No. 9807019438
|
Submitted: February 17, 2016
|
Decided: April 18, 2016

Upon Consideration of Defendant's Motion for Review of Sentence Granted

Attorneys and Law Firms

Jason C. Cohee, Esquire, Deputy Attorney General, Department of Justice, Dover, Delaware for the State.

William T. Deely, Esquire, Public Defender's Office, Dover, Delaware for the Defendant.

OPINION

Young, J.

***1** This Order responds to Defendant Culp's Motion for Review of Sentence, which was filed pursuant to Superior Court Criminal Rule 35(b). That Rule indicates that a motion for reduction of a sentence made more than 90 days after the imposition of the sentence (which this Motion certainly is) may be considered only in "extraordinary circumstances." It is on a presentation of circumstances, which Culp asserts are extraordinary, that she bases her request.

The State has suggested that Rule 35(b) extraordinary circumstances implies the presence of a dire medical issue. Several cases do exist where such drastic medical conditions, not being adequately provided for in incarceration, do constitute Rule 35(b) extraordinary circumstances.[1] However, the Rule itself does not so limit "extraordinary." Absent any statutory definition, ordinary language usage must apply. To that effect, "extraordinary" must be taken to mean exceptional in character; remarkable." It is to be bourne in mind that the context of any such consideration is the criminal justice system of Delaware, where sentences in effect for more than 90 days are certainly presumed to be beyond disturbing. Cases, which will be addressed, have made clear that few applications claiming extraordinary circumstances will be considered, upon analysis, to be extraordinary for purposes of sentence modification after 90 days have elapsed. Nevertheless, Rule 35(b) specifically provides that, when circumstances are indeed extraordinary in the context above mentioned, then sentence modification may be considered. Our Supreme Court has in *State v. Lewis*[2] acknowledged that such may be appropriate.

1 See, for example, *State v. DeRoche,* 2003 WL 22293654, 2003 Del.Super. LEXIS 489 (Del.Super.).

2 797 A.2d 1198 (Del.2001).

The State has referred to several cases of significant circumstances where a Rule

Ex. A

35(b) motion was denied, which denial was affirmed. A starting point may be *Allen v. State*.[3] In that case, Allen asserted that certain deviations among plea promises, plea agreement terms and actuality of sentence should engender a sentence modification. The State, the Superior Court and the Supreme Court determined otherwise. The facts of that case have little bearing on Culp's case. Nevertheless, some language does. The Supreme Court, in affirming the Trial Court decision, stated that: "Allen's prison record is not sufficient to establish 'extraordinary circumstances' under Superior Court Criminal Court Rule 35(b) ..." The Court certainly did not preclude a prison record's establishing extraordinary circumstances. The fair reading is quite to the contrary. Allen's record was (probably woefully) not enough, but the process and the possibility exist.

3 2007 WL 1519030 (Del. May 25, 2007).

Upshur v. State,[4] cited by the State, stresses the many, many different efforts Upshur made to attack his sentence including multiple Supreme Court appeals. Very little is said, in simply affirming the Trial Court, other than that "all the [unspecified] positive things that Upshur has done since his incarceration ..." did not "establish extraordinary circumstances." Thus, *Upshur* does not provide guidance to Culp.

4 2006 WL 212199 (Del. Jan. 27, 2006).

***2** *Ketchum v. State,*[5] again, affirmed a Superior Court denial of a Motion for reduction. Here, Ketchum showed that he had "availed himself of numerous educational and treatment programs, including completion of the Key Program. The Supreme Court, finding no abuse of discretion by the Superior Court in its denial of Ketchum's motion, was not swayed to reverse the Trial Court's determination that extraordinary circumstances had not been shown.

5 2002 WL 1290900 (Del. June 6, 2002).

Shockley v. State[6] is a case where the Appellant, having failed to mention it at the sentencing court motion level, asserted that he had Hepatitis C, which was not being properly treated in prison. The Supreme Court refused to consider that newly raised issue, and affirmed the Trial Court, finding no abuse of discretion.

6 2007 WL 2229022 (Del. Aug. 2, 2007).

Finally, in *Triplett v. State,*[7] Triplett evidently argued that his successful completion of the sentence-ordered Greentree Program satisfied the stringent requirements of a Rule 35(b), post 90 day, situation. The Supreme Court noted that the Superior Court had correctly denied Triplett's Motion.

7 2008 WL 802284 (Del. Mar. 27, 2008).

If the singular purpose of a sentence were to punish, perhaps no legitimate discussion would exist. Noting that the place of Culp's incarceration is Baylor Women's *Correctional* Institution, and that Rule 35(b) exists at all, the inevitable conclusion is that rehabilitation is at least one aspect of the Delaware penal system.

Accordingly, we look to Culp's incarceration period. The State asserts that the family of the victim of Culp's killing "wants to see her serve the full sentence." That is certainly understandable. Nevertheless, Culp's progress during the about-to-be 18 years since her initial incarceration, most of which are documented, and are enclosed with her motion, is extensive. The areas of progress include mental health, work skills and educational. The documentation demonstrating much of it is attached to this Order, and incorporated by reference.

The ultimate effect of Culp's tremendously ambitious efforts is that she has not only exposed herself to, but excelled in the acquisition of, skills that will make her a particular benefit to the community upon her reintegration. These manifest endeavors far exceed an inmate's "doing what was required" or "filling up the time."

She has achieved an Associates of Applied Science Degree in Marketing from Ashworth College in Atlanta, Georgia, graduating with Honors and a 3.15 GPA. That is just the culmination of her academic pursuits. Through many courses—several of 400 hour duration—she has qualified herself to teach (and has taught) a variety of courses to other inmates. These have included G.E.D. classes, Thresholds, many Drug education classes, and much more, as the attachments demonstrate. For 11 years she has been an Educational Tutor at Baylor, whose performance has been described as "exemplary." Indeed, she has trained other tutors. Letters of high praise from a variety of sources are replete through the materials.

In an outside world of rapidly changing technologically, Culp has prepared herself for reasonably smooth transition by completing a great many computer courses, even achieving a State of Delaware Computer Operator certificate.

On a less specific, but significant, level of transition into a "normal living" and community beneficial capacity, she has attained abilities in Spanish, culinary arts, diverse aspects of Women's Health, public speaking, dancing and floral design. These pursuits will help normalize Culp's transition into the community, and heighten her benefit to that community.

***3** She has expressed, in a variety of forms, great remorse for the actions causing her conviction. Not only do those expressions project with sincerity, they are founded upon significant religious courses, activities and projects which Culp has pursued throughout her incarceration. Unsolicited letters from religious leaders endorse that.

Critical to order in a penal institution is the presence of hope for inmates to perceive through their periods of imprisonment. It is difficult to imagine a better beacon for others than the example that Culp has provided through her extensive time, and consequently the justice system's acknowledgement of that.

This Court finds, as a matter of fact, that Culp has demonstrated beyond cavil extraordinary circumstances, in the clearest

manner that Rule 35(b) could conceive, for a reduction of her sentence.

Accordingly, in IK98–08–0027, the sentence is modified as follows: 20 years at supervision Level V, suspended after 12 years, 10 years of which is a mandatory term, effective July 29, 1998; in IK98–08–0028: 8 years at supervision Level V, suspended after 5 years, 3 years of which is a mandatory term, followed by 2 years at Level III supervision.

The Level III probation may be transferred to Florida if Culp provides for the Interstate transfer.

To the extent above described, Defendant Culp's Motion is GRANTED.

SO ORDERED this 18th day of April, 2016.

All Citations

--- A.3d ----, 2016 WL 3191131

CERTIFICATE OF SERVICE

I, Sean P. Lugg, Esq., do hereby certify that on June 27, 2016, I caused a copy of the State's Opening Brief to be served electronically upon the following:

Bernard J. O'Donnell
Office of Public Defender
Carvel State Office Building
820 North French Street, 3rd Floor
Wilmington, Delaware 19801

/s/ Sean P. Lugg
Sean P. Lugg (No. 3518)
Deputy Attorney General