

STATE OF VERMONT
SUPERIOR COURT

STATE OF VERMONT

v.

TARYN BLOUIN

Chittenden Unit, Criminal Division
Docket No. 4623-11-08 Cncr

STIPULATED RULE 35 MOTION TO REDUCE SENTENCE

NOW COMES the State of Vermont by and through Chittenden County State's Attorney, Sarah George, and Defendant by and through counsel, Sara Puls, and hereby moves this Honorable Court to reduce Ms. Blouin's sentence from 5 years, 10 months to 15 years to serve, to a probationary sentence, pursuant to V.R.Cr.P. Rule 35(b). In support of this stipulated motion, the parties offer the following.

Statement of Facts

Ms. Blouin is currently in the custody of the Department of Correction's (hereinafter DOC) and incarcerated at Chittenden Regional Correctional Facility (hereinafter CRCF). Ms. Blouin was sentenced to the custody of the DOC (5 years, 10 months to 15 years to serve) back on October 7, 2009 for a conviction of aggravated assault. Ms. Blouin struggles with substance use disorder, as well as mental health issues. Ms. Blouin has met her minimum sentence yet is still currently incarcerated at CRCF. Her maximum sentence is currently November 3, 2023 during which time she could serve any or all of that in the jail at the complete discretion of DOC.

Memorandum of Law

Vermont Rule of Criminal Procedure Rule 35(b) gives this Court jurisdiction to reduce sentences. Vermont Rule of Criminal Procedure 35(b) states as follows:

Reduction of Sentence. The court, on its own initiative or on motion of the defendant, may reduce a sentence within 90 days after the sentence is imposed, or within 90 days after entry of any order or judgment of the Supreme Court upholding a judgment of conviction. The court may also reduce a sentence upon revocation of probation as provided by law. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision.

V.R.Cr.P. 35(b).

Although the first portion of Rule 35(b) only contemplates a 90-day time period, which this case falls outside of, the parties stipulate to waive this time period, thus, the Court may reduce defendant's sentence pursuant to Rule 35(b). The Vermont Rules of Criminal Procedure and Rule 35(b) language are derived from the *Court* and not the Legislature. Whenever a rule (as opposed to a statute) sets out a time limit, it is non-judicial since the Court created the rule, because only the Legislature can set the jurisdiction of the Courts, not the Court itself. Although the Reporter's Notes to Rule 35 appear in contradiction to this premise, the old law cited therein is no longer controlling after the recent U.S. Supreme Court case of *Hamer v. Neighborhood Housing Services of Chicago*, which held that prescribed time limits found only in court-promulgated rules but not in an underlying statute are not jurisdictional, thus, may be waived by the parties. *Hamer v. Neighborhood Hous. Servs. of Chicago et. al.*, 138 S. Ct. 13, 17 (2017) (determining that "a provision governing the time to appeal in a civil action qualifies as jurisdictional only if Congress sets the time"); *Kontrick v. Ryan*, 540 U.S. 443, 452

(2004) (“Only Congress may determine a lower federal court's subject-matter jurisdiction.”).

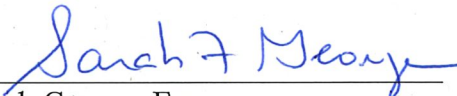
In the alternative, the last sentence of the section allows this Court to reduce Mr. Blouin’s sentence from an incarcerative sentence to a probationary sentence. Under a plain reading of the Rule, there is no time frame attached to this portion (the last sentence) of the Rule 35(b). Even the 90-day rule did attach to the last sentence of Rule 35(b), as argued above, the 90-day time frame is not jurisdictional, thus, it can be waived by the parties. *See Hamer*, 138 S. Ct. 13, 17 (2017) (holding that prescribed time limits found only in court-promulgated rules but not in an underlying statute are not jurisdictional, thus, may be waived by the parties).

This Court should grant this stipulated motion to reduce Ms. Blouin’s sentence to a probationary sentence. She is currently incarcerated at CRCF despite being past her minimum. She is not being adequately treated for her mental health struggles at CRCF, yet she has service providers in the community that could treat her. She has maintained sobriety for the past eight months and could continue services in the community to support her continued sobriety. Thus, the parties stipulate to waive the 90-day requirement (to the extent it applies) and reduce Ms. Blouin’s sentence from 5 years, 10 months to 15 years to serve, into a probationary sentence, pursuant to V.R.Cr.P. Rule 35(b). The parties will propose stipulated probation conditions at an anticipated hearing on this matter. This change to Ms. Blouin’s sentence should result in the release from CRCF for supervision in the community.


Conclusion

WHEREFORE, based on the foregoing, the parties respectfully request this Honorable Court grant this stipulated motion to reduce Ms. Blouin's sentence from a to serve sentence with a maximum of 15 years to a probationary sentence, pursuant to V.R.Cr.P. 35(b). If the Court is not inclined to grant this motion on the pleading alone, the parties would request that this be set for a hearing this week with a transport order.

DATED at Burlington, Vermont this 17th Day of December, 2019.



Sarah George, Esq.
Chittenden County State's Attorney



Sara Puls, Esq.
Attorney for Ms. Blouin