

January 23, 2001

Edward C. Gill, Esquire
16 North Bedford Street
PO Box 824
Georgetown, DE 19947

RE: State of Delaware v. Keith Nelson
ID #9811009212/9811011536

Dear Mr. Gill:

Your motion for modification of sentence under Rule 35 filed on December 21, 1999, has been reviewed. It is denied for the following reasons:

(i) It is filed more than 90 days from the imposition of sentence on June 18, 1999, and no extraordinary circumstances exist to justify later consideration;

(ii) It is repetitive and prior similar requests from Mr. Nelson were rejected by this Court by letters dated October 17, 2000, May 25, 2000, February 9, 2000, November 2, 1999, and August 30, 1999, to Mr. Nelson;

(iii) When sentenced for the violation of probation on June 18, 1999, Mr. Nelson did not request counsel. By letter dated June 8, 1999, he was advised of his right to have counsel. Mr. Nelson was also provided with a copy of the violation of probation report for his review. At the June 18 hearing, Mr. Nelson did not request an attorney, and, *inter alia*, admitted testing positive for cocaine use on two tests taken in May. He also refused to submit to a drug test in April. As these violations were admitted, fundamental fairness did not require the appointment of counsel. The probation report evaluated Mr. Nelson as follows:

The offender reported to this officer that he moved to Delaware from New York a little over a year ago. I checked into his criminal history in New York and it revealed that he has an extensive list of robbery, assault, drug and weapons offenses in their jurisdiction. He informed this officer that he moved down here after he was released from his parole obligation in New York. It is

apparent that he has moved on to greener pastures. In just under a year he has managed to be arrested 8 times and be charged with 17 offenses. The current probation was a plea down from original charges of Robbery First Degree, Burglary First Degree, Burglary Second Degree and Conspiracy Second Degree. His behavior is only getting worse. An underlying cause of his behavior may be his cocaine addiction. This needs to be addressed before Mr. Nelson is allowed back into the community.

The violations occurred shortly after his original sentence of February 5, 1999. The underlying charges are violent and with his violent background, Level 5 time is appropriate for the safety of the community. He is not amenable to supervision at a lesser status. Mr. Nelson was admitted to the Key program but was discharged because of his inappropriate behavior. No further consideration is warranted.

IT IS SO ORDERED.

Richard F. Stokes, Judge

cc: Prothonotary