

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	CASE NO. ST-04-CR-F142
	)	
v.	)	
	)	JURY TRIAL DEMANDED
GABRIEL W. JOSEPH,	)	
	)	
Defendant.	)	
_____	)	

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Attorney for Defendant

CHRISTIAN, ADAM G., Judge

MEMORANDUM OPINION

(Filed: April 7, 2011)

I. Summary.

The Rules of the Superior Court of the Virgin Islands provide for a defendant's sentence to be reduced if his motion is timely filed. Defendant Gabriel Joseph moves the Court to reduce his ten (10) year incarceration sentence to not more than five (5) years. The Court finds that the hardship Defendant's sentence has on his family and the steps that he is taking to turn his life around do not warrant a reduction of his sentence.

II. Pertinent factual and procedural background.

On August 10, 2004, a jury found Mr. Joseph guilty of possessing stolen property, specifically four rims and four tires, in violation of V.I. CODE ANN. tit 14 § 2101(a). The Court sentenced Defendant on January 16, 2005 under the Habitual Offender Statute and ordered him to serve the mandatory minimum sentence of ten (10) years imprisonment. Mr. Joseph appealed the Court's judgment to the Appellate Division of the District Court of the Virgin Islands ("Appellate Division"), and on December 9, 2008 that court affirmed Mr. Joseph's conviction. In a motion dated January 28, 2009, Defendant moved this Court for a sentence reduction.

Because the Defendant did not serve his motion on the People of the Virgin Islands (the "People"), by Order dated June 18, 2010, the Court directed the Clerk of the Court to transmit a copy of the motion to the People. The same order directed the People to submit their opposition within thirty (30) days. However, the People did not file their opposition to Defendant's motion until November 29, 2010, and did not request an extension of time to file their submission. Mr. Joseph, through his court-appointed counsel, filed his reply to the People's Opposition on January 5, 2011.

III. Discussion.

A motion for reduction of sentence "is essentially a plea for leniency addressed to the sound discretion of the sentencing court."¹ SUPER. CT. R. 136 allows the Court to reduce a sentence "within 120 days after any order or other mandate issued upon affirmance of the judgment or dismissal of the appeal." When a defendant moves for a reduction of a sentence, he "must demonstrate some valid reason for the court to reconsider its earlier ruling and must set forth substantial facts or law to persuade the Court to reverse its earlier decision."² When considering a motion for reduction of sentence, this Court analyzes the nature of the defendant's criminal conduct and the harm caused by the defendant.³

Mr. Joseph seeks a reduction of his ten (10) year sentence because he is very remorseful and has turned his life around while incarcerated. Defendant's reply to the People's opposition further notes that rehabilitation does not have to meet an exceptional standard, as argued by the Government.⁴ Instead, Defendant asserts that the Court may simply review and consider Defendant's progress and find that he is entitled to a reduction of his sentence, similar to the defendant in *Government v. Santiago*.

a. Mr. Joseph's motion was timely filed, and this Court has the authority to reduce his sentence under the habitual criminal statute.

As a preliminary matter, Mr. Joseph complied with SUPER. CT. R. 136's one hundred twenty (120) day filing requirement. The Appellate Division affirmed this Court's judgment on

¹ *Government v. Santiago*, 27 V.I. 232, 244, 798 F. Supp. 274, 282 (D.V.I. 1992) (citing *Government v. Gereau*, 16 V.I. 603, 613, 603 F.2d 438, 443 (3rd Cir. 1979)). See also, *Government v. Charles*, 47 V.I. 160, 164 (Super. Ct. 2005) (stating that a "judge can deny such motions for virtually any reason or for no reason.") (citations omitted).

² *Government v. Charles*, 47 V.I. at 166 (citing *United States v. Woods*, 986 F.2d 669, 673 (3rd Cir. 1993)).

³ *Id.* at 165 (citations omitted).

⁴ The People did not request an extension of time to file their opposition, provide any reason for their delayed submission in the body of the opposition, and there is no reason appearing to the Court which justifies the delay. Therefore, the Court will not consider the arguments raised in the People's opposition. See, *Martinez v. Columbian Emeralds, Inc.*, 51 V.I. 174, 189-191 (V.I. 2009). The reply memorandum filed by Defendant's counsel also was filed two days late. However, the Court takes judicial notice that it was closed on several days during the first week of January, 2011 due to inaugural activities and the Crucian Festival. In light of the circumstances, and the very short delay, the Court concludes that it is appropriate to accept the Defendant's submission. See, *United States v. Eleven Vehicles, Their Equipment and Accessories*, 200 F.3d 203, 215 (3rd Cir. 2000) (trial courts have the inherent authority to deviate from procedural rules when there is a reason to do so and such a departure will not unfairly prejudice the opposing party).

December 8, 2008, and Defendant's motion was filed fifty-one (51) days later on January 28, 2009. Also, under the habitual offender statute, an individual who is convicted of a felony within ten (10) years of completing a sentence for a prior felony conviction shall be incarcerated for a minimum of ten years.⁵ Notably, "[i]f the last conviction is for a crime of violence...this minimum period of incarceration shall not be suspended, nor shall probation be granted."⁶ Defendant's last conviction was for possession of stolen property,⁷ which is not a crime of violence under Virgin Islands law.⁸ Thus, there is no statutory bar to this Court's ability to consider Defendant's instant request.

b. The reasons asserted by Mr. Joseph do not warrant reducing his sentence.

In light of the reasons given by Defendant in support of his request, the Court does not believe that his sentence should be reduced. First, Mr. Joseph claims that he is very remorseful, however, in the same sentence he professes his innocence, stating that "...he had no knowledge that the rims were stolen or no [sic] reason to believe that the rims were stolen when he purchased them...." And, Defendant further writes that he "feels very sorry for [sic] even though the victim got back the rims." Surprisingly, the valuable lesson that Mr. Joseph informs the Court he has learned from his experience is to "[n]ever purchase anything from anyone on the street without a receipt." These sentiments do not reflect someone who has "a gnawing distress arising from a sense of guilt for past wrongs."⁹ Even if Defendant's remorse was genuine, "remorse for past mistakes do not justify a reduction of sentence."¹⁰

Second, Defendant expresses how difficult his incarceration has been on his family, especially his seven year old daughter who he is trying to financially support. In *Government v. Charles*, the defendant made similar expressions, and this Court held that "hardship suffered by a Defendant's family because of his imprisonment and resulting inability to provide financial support for his family is not a basis for reduction of a sentence."¹¹ Likewise, the difficulties that Defendant's incarceration has on his family and daughter do not persuade this Court that his sentence should be reduced.

Third, Defendant points to the big turnaround in his personal life since being incarcerated. For example, he joined a religious group and is taking bible study courses, he does not engage in any violent behavior, and he has maintained an excellent attitude during his incarceration. While these activities and qualities appear to be a positive change in his life, they do not entitle him to a reduction of sentence. Society intends for inmates to reflect on their actions and turn their life around so they can be good citizens when they are released into the

⁵ 14 V.I.C. § 61(a).

⁶ *Id.*

⁷ 14 V.I.C. § 2101(a).

⁸ 23 V.I.C. § 451(e).

⁹ *Remorse Definition*, merriamwebster.com, <http://www.merriam-webster.com/dictionary/remorse> (last visited Feb. 2, 2011).

¹⁰ *Government v. Charles*, 47 V.I. at 167 (citing *United States v. Smith*, 964 F.2d 885, 887-888 (9th Cir. 1992)).

¹¹ *Id.* at 166 (citations omitted).

People of the Virgin Islands v. Gabriel W. Joseph
Superior Court Case No. ST-04-CR-F142
Memorandum Opinion

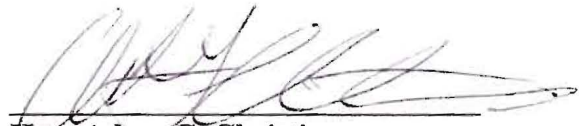
community.¹² Given that the changes Mr. Joseph relies upon were initiated during his incarceration, it appears that his sentence itself has led, at least in part, to his rehabilitation. Moreover, Mr. Joseph's asserted behavioral changes since being incarcerated, which are not supported by any report of the Bureau of Corrections or any affidavit, as laudable as they may be, are not strong enough of a basis to reward him with a reduced sentence.

Finally, Mr. Joseph compares his case to *Government v. Santiago*, wherein the defendant's eight (8) year sentence was reduced to five (5) years. Defendant notes his positive adjustment since being incarcerated, while pointing out that "Mr. Santiago's sentence was reduced [sic] simply because of him attending a drug program at the G.G.A.C.F." Unlike this case, the defendant in *Santiago* had a life of crime that was rooted in his drug dependency. The firm steps that Mr. Santiago took to rid himself of his chemical dependency, his repeated remorse for his crimes and that "defendant's participation in the in-patient Rehab Program...is critical to defendant permanently overcoming his chemical dependency," are the reasons why that court reduced Mr. Santiago's sentence. Those facts do not compare with Mr. Joseph's. There is no evidence that Defendant's extensive prior record stems from drug dependency. Further, Defendant's attempts at being remorseful are half-hearted at best, and he continues to blame the Court and his appointed counsels for his present predicament. Therefore, the Court determines that Mr. Joseph's circumstances are dissimilar to those in *Santiago*, and his sentence should not be reduced.

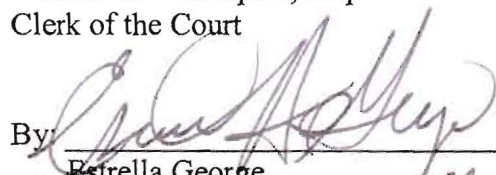
IV. Conclusion.

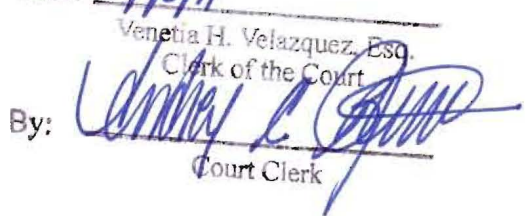
Mr. Joseph has not provided substantial reasons that rise to the level of warranting a reduction of his sentence. Therefore, his Motion for a Reduction of Sentence will be denied in an appropriate order of even date.

Dated: April 7, 2011


Hon. Adam G. Christian
Judge of the Superior Court
of the Virgin Islands

ATTEST:
Venetia H. Velazquez, Esq.
Clerk of the Court

By: 
Estrella George
Acting Chief Deputy Clerk 4/7/2011

CERTIFIED A TRUE COPY
Date: 4/8/11
Venetia H. Velazquez, Esq.
Clerk of the Court
By: 
Court Clerk

¹² See, *Kelly v. Robinson*, 479 U.S. 36, 52 (1986) (opining "[t]he criminal justice system is operated for the benefit of society.").

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ORDER

THIS MATTER is before the Court on Defendant's "Motion for Court Sentencing Transcript In Forma Paueris [sic] Status in the Above Matter of the Government of the Virgin Islands, vs. Mr. Gabriel Winston Mason Joseph." In support of this motion, Mr. Joseph asserts that he needs the transcripts of the sentencing hearings held in the above-captioned matter on December 8 and 9, 2004, to support his claims of ineffective assistance of counsel. Mr. Joseph raised those claims in *Gabriel W.M. Joseph v. Government of the Virgin Islands*, Superior Court Case No. ST-10-MC-18. Attached to his instant motion is a note to the Clerk of the Court indicating that "This affidavit of indigence is in reference to civil case #ST-10-MC-18...." On February 15, 2011, the Honorable Alan D. Smith was designated to hear that habeas corpus action and make proposed findings of fact and recommendations to the Honorable James S. Carroll, III. Because the instant request is a part of the habeas corpus proceeding, it is hereby

ORDERED that the Clerk of the Court shall forward a copy of Defendant's "Motion for Court Sentencing Transcript In Forma Paueris [sic] Status in the Above Matter of the Government of the Virgin Islands, vs. Mr. Gabriel Winston Mason Joseph" to the Honorable Alan D. Smith for consideration as part of *Gabriel W.M. Joseph v. Government of the Virgin Islands*, Superior Court Case No. ST-10-MC-18; and it is further

People of the Virgin Islands v. Gabriel W. Joseph
Superior Court Case No. ST-04-CR-F142
Order

ORDERED that copies of this Order shall be served on Defendant Gabriel W. Joseph and also directed to the Clerk of the Supreme Court, the Honorable Alan D. Smith, and all counsel of record.

Dated: April 7, 2011



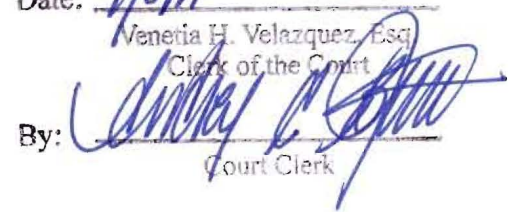
Hon. Adam G. Christian
Judge of the Superior Court
of the Virgin Islands

ATTEST:
Venetia H. Velazquez, Esq.
Clerk of the Court

By: 
Estrella George
Acting Chief Deputy Clerk 4/7/2011

CERTIFIED A TRUE COPY

Date: 4/8/11
Venetia H. Velazquez, Esq.
Clerk of the Court

By: 
Court Clerk