

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SHAQUAN MCNEIL,	§
	§
Defendant Below-	§ No. 630, 2012
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID 1203018027
	§
Plaintiff Below-	§
Appellee.	§

Submitted: January 23, 2013
Decided: February 21, 2013

Before **HOLLAND, BERGER, and JACOBS**, Justices.

ORDER

This 21st day of February 2013, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The defendant-appellant, Shaquan McNeil, filed this appeal from the Superior Court's order, dated October 23, 2012, sentencing him on his first violation of probation (VOP). The State of Delaware has a filed a motion to affirm the judgment below on the ground that it is manifest on the face of McNeil's opening brief that his appeal is without merit. After review of the record, we find that the Superior Court's sentence failed to credit McNeil with all time previously served on his original sentence.

Accordingly, we remand this matter to the Superior Court for further proceedings.

(2) McNeil pleaded guilty on June 18, 2012 to one count each of Possession of a Controlled Substance, Resisting Arrest, and Terroristic Threatening.¹ The Superior Court immediately sentenced him, effective March 22, 2012, as follows: (i) six months at Level V incarceration, to be suspended immediately for one year at Level IV (DOC discretion), to be suspended after serving 6 months at Level IV for six months at Level III probation on the Possession of a Controlled Substance charge; (ii) one year at Level V incarceration to be suspended immediately for one year at Level III probation on the Resisting Arrest charge; and (iii) one year at Level V incarceration to be suspended immediately for one year at Level III probation on the Terroristic Threatening charge.

(3) On October 23, 2012, McNeil was charged with violating his probation. On November 1, 2012, the Superior Court sentenced McNeil, effective October 23, 2012, as follows: (i) six months at Level V incarceration on the Possession of a Controlled Substance Charge; (ii) one year at Level V incarceration to be suspended immediately for one year at Level IV Work Release, to be suspended after serving six months at Level

¹ DEL. CODE ANN. tit. 16, § 4763(a) (Supp. 2012); DEL. CODE ANN. tit. 11, §§ 621(a)(1), 1257(b) (2007).

IV for the balance to be served at Level V on the Resisting Arrest charge; and (iii) discharged as unimproved on the Terroristic Threatening charge.

(4) In his opening brief on appeal, McNeil contends that the Superior Court's November 1, 2012 sentencing order failed to give him credit for previous time he served at Level V and Level IV. McNeil contends that he is entitled to approximately seven months of Level V time previously served and four months of Level IV time previously served.

(5) A defendant is entitled to Level V credit for all time served at Level V incarceration.² A defendant also may be entitled to Level V credit for time spent at a restrictive Level IV facility.³ In this case, McNeil initially was incarcerated from March 22, 2012 until June 18, 2012, pending disposition of his original criminal charges. This time ostensibly was credited to McNeil in the original sentencing order, which was made effective March 22, 2012. In sentencing McNeil on the VOP, however, the Superior Court reimposed the full, original six month sentence on the Possession of a Controlled Substance charge without reflecting any credit for the nearly three month period that McNeil spent in prison on the original charge prior to sentencing. Moreover, the original sentencing order also

² DEL. CODE ANN. tit. 11, § 3901(b) (2007).

³ See *Anderson v. State*, 2006 WL 3931460 (Del. Dec. 5, 2006).

gave the DOC discretion to determine where McNeil would serve the Level IV portion of his sentence. On the record before us, we are unable to determine whether McNeil was held at a Level IV facility that might entitle him to Level V credit time. Accordingly, this matter must be remanded to the Superior Court to determine all of the credit time to which McNeil is entitled and to resentence him accordingly.

NOW, THEREFORE, IT IS ORDERED that the Superior Court's November 1, 2012 sentencing order is hereby VACATED and this matter is REMANDED for further proceedings consistent with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Carolyn Berger
Justice