IN THE SUPREME COURT OF THE STATE OF DELAWARE

KARL OWENS,	§	
	§	No. 366, 2012D
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 1109022416
Appellee.	§	

Submitted: October 5, 2012
Decided: January 7, 2013

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY,** Justices.

O R D E R

This 7th day of January 2013, upon consideration of the parties' briefs and the Superior Court record, it appears to the Court that:

(1) On March 1, 2012, the appellant, Karl Owens, pled guilty to one count of Possession of a Firearm by a Person Prohibited ("PFBPP"). The statutory maximum sentence for PFBPP, a class D felony, is eight years at Level V.[1]

(2) On March 1, 2012, the Superior Court sentenced Owens to eighteen months at Level V. The sentence order provided that, under title 11, section 4204(k) of the Delaware Code, the sentence "shall be served

[1] Del. Code Ann. tit. 11, §§ 1448(c), 4205(b)(4) (2007).

without benefit of any form of early release."[2] Owens did not appeal the March 1, 2012 sentence.

(3) On April 27, 2012, Owens moved to correct the March 1, 2012 sentence under Superior Court Criminal Rule 35(a). Owens contended that the March 1, 2012 sentence was illegal because section 4204(k) could be applied only to a Level V sentence of one year or less or to a Level V sentence equal to the statutory maximum available for the crime.

(4) In response to the Rule 35(a) motion and in its answering brief on appeal, the State concedes that the March 1, 2012 sentence was erroneous. In the Superior Court, however, the State suggested that "to comply with the limitations of [section 4204(k)], the court need only amend [Owens'] sentence to impose 8 years at Level V, which represents the statutory maximum, and suspend all but 18 months of that sentence." On appeal, the State contends that, because the June 1, 2012 modified sentence order corrected the error in the March 1, 2012 sentence, the error is moot.

(5) Having reviewed the record, the Court agrees that, because the June 1, 2012 order substantively changed the sentence imposed on March 1, 2012, Owens had a right to be present with counsel when the sentence was

[2] Del. Code Ann. tit. 11, § 4204(k).

modified.[3] Because Owens and his counsel were not present when the sentence was modified, we conclude it is necessary to vacate the June 1, 2012 sentence order and remand this matter for a new sentencing hearing.[4]

NOW, THEREFORE, IT IS ORDERED that the modified sentence order dated June 1, 2012 is HEREBY VACATED. This matter is REMANDED for a new sentencing hearing with Owens and his counsel present. Jurisdiction is not retained. The mandate shall issue forthwith.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

[3] *Nave v. State*, 783 A.2d 120, 121 (Del. 2001) (citing *Jones v. State*, 672 A.2d 554, 556 (Del. 1996)); *Fullman v. State*, 431 A.2d 1260, 1264-65 (Del. 1981).
[4] *Id.*