

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEVIN L. HARRIS,	§
	§ No. 342, 2013
Defendant Below,	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§
STATE OF DELAWARE,	§ Cr. ID 0402014101
	§
Plaintiff Below,	§
Appellee.	§

Submitted: December 27, 2013

Decided: February 25, 2014

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

ORDER

This 25th day of February 2014, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Kevin L. Harris, filed this appeal from the Superior Court's denial of his motion for correction of an illegal sentence. Harris asserts that his violation of parole ("VOP") sentence is illegal because the Superior Court reimposed all of the Level V time remaining to be served from his original sentence and, thus, could not legally impose an additional one-year transition period at Level III probation. Given the circumstances of this case, we conclude that Harris is correct. Accordingly, this matter shall be remanded to the Superior Court for correction of Harris' sentence.

(2) The record reflects that Harris pled guilty in August 2004 to one count of Maintaining a Dwelling for Keeping Controlled Substances, a Class F felony. The trial judge sentenced Harris to two years of Level V incarceration, which was suspended entirely for two years at Level II probation.¹ In November 2005, following a remand from this Court,² the trial judge resentenced Harris on that charge to two years at Level V incarceration, which was suspended entirely for two years at Level III probation.

(3) In February 2013, police officers arrested Harris for alleged criminal activity. He was charged with a VOP. After adjudging him guilty of the VOP associated with his Maintaining a Dwelling conviction, the trial judge sentenced Harris to two years at Level V incarceration, followed by a one-year transition period at Level III probation. The transition period was imposed pursuant to 11 *Del. C.* § 4204(l).³ That statute provides, in relevant part, that whenever a court imposes a sentence of one year or more, “then that court must include as part of its sentence a period of custodial supervision at either Level IV, III or II for a period

¹ Harris also was sentenced on three other criminal charges, which are not relevant to his present appeal.

² See *Harris v. State*, 2005 WL 2414423 (Del. Sept. 30, 2005) (vacating Harris’ sentence and ordering a new sentencing hearing).

³ In its answering brief on appeal, the State argues that the transition period imposed by the Superior Court is legal under 11 *Del. C.* § 4204(m). The trial judge, however, expressly sentenced Harris pursuant to Section 4204(l). Section 4204(m) simply does not apply to this case. We, therefore, express no opinion on the State’s interpretation of that statute.

of not less than 6 months to facilitate the transition of the individual back into society.”⁴

(4) In May 2013, Harris filed a motion under Superior Court Criminal Rule 35(a), contending that his VOP sentence was illegal. Harris argued that the one year probationary portion of his sentence illegally exceeded the six-month maximum transition period allowed under 11 *Del. C.* § 4204(l). The trial judge denied Harris’s motion on the ground that six months is the required *minimum* transition period under 11 *Del. C.* § 4204(l), not the maximum.

(5) We disagree with the Superior Court’s conclusion. Where a sentencing court imposes an *original* sentence that is less than the statutory maximum sentence, then it is true that the transition period required by Section 4204(l) may be greater than six months.⁵ But where the original sentence imposed is the statutory maximum sentence, then the transition period under Section 4204(l) may not exceed six months.⁶

(6) In sentencing a defendant for a VOP, Section 4334(c) authorizes the trial court to impose the balance of the Level V time remaining to be served on the

⁴ 11 *Del. C.* § 4204(l) (2007).

⁵ 11 *Del. C.* § 4204(l) (requiring the sentencing court to impose a transition period “of not less than 6 months...”); *Honaker v. State*, 2006 WL 2771652 (Del. Sept. 25, 2006).

⁶ *O’Brien v. State*, 2010 WL 2721279 (Del. July 7, 2010) (noting the State’s concession that, having sentenced the defendant to the statutory maximum sentence, “the Superior Court was not authorized to impose more than a six-month period of transitional supervision following [his] incarceration.”); *Larson v. State*, 1995 WL 236650 (Del. Apr. 13, 1995).

original sentence “or any lesser sentence.”⁷ Accordingly, the maximum sentence of incarceration that the trial court may impose for a VOP is statutorily limited to the time remaining to be served on the original sentence.⁸ If the trial court imposes all of the Level V time remaining to be served from the defendant’s original sentence, then the trial court may impose only a six-month period of transitional supervision under Section 4204(l).⁹

(7) Here, the Superior Court sentenced Harris on his VOP to all of the Level V time remaining to be served on his original sentence. Because Harris was sentenced to the maximum term of incarceration allowed by law, the Superior Court could impose only a six-month period of transition under Section 4204(l). Accordingly, this matter must be remanded for correction of Harris’ sentence.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is REVERSED. This matter is REMANDED for a corrected sentencing order consistent with this order.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁷ 11 Del. C. § 4334(c) (2007).

⁸ See *Pavulak v. State*, 880 A.2d 1044, 1046 (Del. 2005) (noting that the immediately preceding sentence sets the legal parameters for any amount of incarceration that may be imposed for a subsequent VOP).

⁹ See *McNair v. State*, 2013 WL 4710619 (Del. Aug. 29, 2013); *Honaker*, 2006 WL 2771652.