IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEFFREY W. THOMAS,	§	
	§	No. 609, 2013
Defendant Below-Appellant,	§	
	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware
	§	in and for Kent County
STATE OF DELAWARE,	§	Cr. ID Nos. 1109014563
	§	1110008461
Plaintiff Below-Appellee.	§	
	§	

Submitted: December 2, 2013
Decided: December 20, 2013

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

O R D E R

This 20th day of December 2013, it appears to the Court that:

(1) The defendant-appellant, Jeffrey W. Thomas, filed an appeal from the October 21, 2013 denial of his motion for modification of his violation of probation ("VOP") sentence. The order denying the motion was purportedly a final order issued by a Superior Court Commissioner.

(2) On November 5, 2013, the Clerk of the Court issued a notice to show cause why the appeal should not be dismissed pursuant to Supreme Court Rule 29(b) due to this Court's lack of jurisdiction to consider an appeal directly from a Superior Court Commissioner. The appellant filed his response to the notice to show cause on November 26, 2013.

(3) On November 25, 2013, the Clerk, at the direction of the Court, asked the State to address whether the Superior Court Commissioner had the authority to issue the October 21, 2013 order. The State specifically was directed to address the Delaware Supreme Court case entitled *Johnson v. State*, 884 A.2d 476 (Del. 2005). On December 2, 2013, the State filed its response.

(4) The State informed the Court that the Superior Court Commissioner not only signed the order denying Thomas's motion for sentence modification, but also signed two previous orders, both dated August 2, 2013, finding that Thomas had committed two VOPs.[1] Based upon this Court's rulings in *Johnson*, the State requested that this matter be remanded to the Superior Court for a new VOP hearing.

(5) As this Court previously has ruled, while Del. Code Ann. tit. 10, § 512(a) (4) permits a Superior Court Commissioner to accept a misdemeanor guilty plea and impose sentence thereon in limited circumstances, a Superior Court Commissioner has no authority to conduct a VOP hearing.[2] As this Court stated in *Johnson*, "a violation of probation hearing is a separate and distinct adjudicatory proceeding in the nature of a

[1] The Superior Court docket reflects that Johnson's VOP hearing was conducted on August 2, 2013.
[2] *Johnson v. State*, 884 A.2d 475, 479-80 (Del. 2005).

trial" and, moreover, "Section 512 does not confer upon Superior Court Commissioners any authority to conduct trials."[3]

(6) The Superior Court Commissioner in this case clearly lacked the authority to conduct the VOP hearing and sentence Thomas for the VOP. As a consequence, we also conclude that the Commissioner lacked the authority to deny Thomas's subsequent motion for modification of his VOP sentence.

(7) For the reasons stated above, the October 21, 2013 order denying Thomas's motion for sentence modification, as well as the August 2, 2013 orders purporting to impose VOP sentences upon Thomas, must be vacated and this matter remanded to the Superior Court for a new VOP hearing presided over by a judge of the Superior Court.

NOW, THEREFORE, IT IS ORDERED that the orders dated August 2, 2013 and October 21, 2013 are hereby VACATED and this matter is hereby REMANDED to the Superior Court for further proceedings in accordance with this Order.

BY THE COURT:

/s/ Carolyn Berger
Justice

[3] Id. at 480.