

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
v.)	I.D. #85007363DI &
)	# 86000928DI
)	
BRYANT F. JACKSON,)	
)	
Defendant)	
)	

Submitted: April 24, 2006
Decided: May 24, 2006

Upon Remand from Delaware Supreme Court to Provide Reasons for this Court's July 25, 2005, Denial of Defendant's Motion for Sentence Modification.¹

REPORT

This 24th day of May, 2006, upon remand from the Delaware Supreme Court to provide reasons for this Court's July 25, 2005, denial of Defendant's Motion for Sentence Modification, it appears to the Court that:

1. Bryant F. Jackson ("Defendant") was indicted in December 1985 on Burglary Second Degree and Attempted Misdemeanor Theft. On December 31, 1985, Defendant pled guilty to Burglary Second Degree and was sentenced to 5 years in prison, suspended after 2 years for 5 years probation.

¹ This constitutes a "report" in response to the Delaware Supreme Court's remand in the case of *Jackson v. State*, Del. Supr., No. 351, 2005, Jacobs, J. (March 27, 2006) (ORDER).

Then, in February 1986, Defendant was indicted for Burglary First Degree, Robbery First Degree, Assault First Degree, and Possession of a Deadly Weapon During the Commission of a Felony. In July 1986, Defendant pled guilty to Assault First Degree and Robbery Second Degree as a lesser included offense of the original Robbery First Degree count. Defendant was sentenced to 10 years in prison for the Robbery Second Degree charge (with no probation to follow) and 30 years in prison, suspended after 15 years for 10 years probation for the Assault First Degree charge. Under those three sentences for the three separate criminal charges, Defendant, in 1986, began a 27-year prison sentence followed by 15 years of probation.

2. In 1998, Defendant was released from prison on parole, having served about 13 years of his 27-year prison sentence. Defendant asserted, in his May 16, 2005, Motion for Sentence Modification that is at issue in this case, that his “parole was converted to probation by the Department of Corrections.”² However, in August 1999, Defendant was charged with new criminal charges including an Assault First Degree charge and was ultimately found to be in violation of probation by the Superior Court.³ The Superior Court judge originally assigned to this case apparently (but

² Def.’s Mot. for Sent. Modification ¶ 3. *See also* Letter to the Court from Loren C. Meyers, Esq. 2 (April 24, 2006) (stating that here “the Department of Correction had treated the defendant as being on probation when, in fact, the defendant was on parole”).

³ *State v. Jackson*, Del. Super., ID No. 86021673DI, Gebelein, J. (Aug. 4, 1999) (ORDER).

erroneously) believed that the Robbery Second Degree charge had a probationary period as part of the original sentence and purported to “discharge” Defendant from probation on the Robbery Second Degree conviction on August 4, 1999 (but there was no probation on this charge), and then sentenced Defendant on the new Assault First Degree conviction to 10 years in prison, suspended after 30 days for 5 years probation.⁴ Then, in October 2003, the Board of Parole issued a warrant for Defendant for a parole violation. Defendant was ultimately apprehended in November 2004. After a Board of Parole hearing on January 25, 2005, Defendant’s parole was revoked and Defendant was ordered to serve the remainder of his Level V sentences.⁵

3. Defendant, then represented by counsel,⁶ moved to modify his Level V sentences in the Superior Court on May 16, 2005. Defendant argued that, at the time the Board of Parole issued the warrant, he was on “probation status” and that “any violation of his terms of supervision constituted a violation of probation, not parole, which [the] Superior Court retained

⁴ *Id.* The August 4, 1999, order purported to “discharge” Defendant from “probation” for the Robbery Second Degree conviction (ID No. 86000928DI), but it did effectively discharge Defendant from probation stemming from a conviction for receiving stolen property (ID No. 85000570DI).

⁵ The Board of Parole did, however, state that Defendant “may reapply for parole consideration in 12 months (1/2006).”

⁶ Michael W. Modica, Esquire, Defendant’s counsel in this Court for the Motion for Sentence Modification, was allowed to withdraw by the Delaware Supreme Court from Defendant’s case on appeal to that court.

jurisdiction to address.”⁷ Defendant claimed that the Superior Court’s August 4, 1999, order “supplanted any claim that the Board of Parole retained jurisdiction over [Defendant’s] case, and constituted the authorized judgment of conviction for analysis of the legality of any sentence imposed upon Defendant.”⁸ The crux of Defendant’s argument was that the Board of Parole did not have jurisdiction over the Defendant because he was on probation, not parole, and therefore the Board’s revocation of parole was illegal. The judge originally assigned to this case denied that motion without explanation on July 25, 2005.

4. Defendant appealed the July 25, 2005, denial of his Motion for Sentence Modification to the Delaware Supreme Court. The Supreme Court has remanded the case because “the Superior Court failed to provide the reasons for its decision[.]”⁹ The Supreme Court ordered that this Court supply its reasons for that decision and specifically directed this Court “to address Jackson’s argument that the Parole Board no longer had the authority to re-impose his Level V sentences because the Superior Court

⁷ Def.’s Mot. for Sent. Modification ¶ 7.

⁸ *Id.* ¶ 9.

⁹ *Jackson v. State*, Del. Supr., No. 351, 2005, Jacobs, J., at 1 (March 27, 2006) (ORDER) (“The Order denying Jackson’s motion contains only the word “Denied” and the judge’s signature on the notice page of the motion.” *Id.* n.1.).

previously modified his sentences in its August 4, 1999[,] order.”¹⁰ The State set forth its position by letter of April 24, 2006. Defendant’s position had been fully set forth in his May 16, 2005, Motion for Sentence Modification.

5. The issue is whether the Superior Court’s August 4, 1999, order had any effect on the Board of Parole’s authority to later revoke Defendant’s parole and to reinstate his Level V incarceration. The facts of this case and the controlling precedent compel the conclusion that the August 4, 1999, order had no legal effect on the Board of Parole’s authority to revoke Defendant’s parole.

6. As a threshold matter, this Court has limited jurisdiction to review a decision of the Board of Parole.¹¹ Therefore, Defendant’s Motion for Sentence Modification is not the proper vehicle to vacate the Board’s revocation of Defendant’s parole.

7. This Court agrees with the State that Defendant’s claims in this case are controlled by *Hall v. Carr*.¹² In *Hall*, the defendant was sentenced in

¹⁰ *Id.* at 2.

¹¹ *Moore v. State*, 171 A.2d 215, 215 (Del. 1961) (“[T]he Superior Court is given no statutory jurisdiction to review the findings of the Parole Board.”). *Cf. Semick v. Dep’t of Corrections*, 477 A.2d 707, 708 (Del. 1984) (recognizing that an appropriate instrument to obtain review of an action of the Board of Parole in this Court is a writ of certiorari).

¹² 692 A.2d 888 (Del. 1997) (holding that parole revocation by Board of Parole was proper as defendant was on parole during the commission of new offenses despite

January 1990 to 6 years at Level V, followed by 2 years at Level III probation and 3 years at Level II probation; he then was granted parole and released in November 1991.¹³ However, Hall claimed that when he reported to the Probation and Parole Office, he was assigned to Level III probation and “that his parole term was deferred until completion of his probationary sentence.”¹⁴ Nevertheless, as a result of new criminal offenses, the Board of Parole issued a parole violation and later revoked his parole.¹⁵

8. In *Hall*, the Delaware Supreme Court found that the Department of Correction had been in error when it assumed that Hall’s probation ended in June 1992, even though Hall’s maximum sentence expiration date had not yet passed.¹⁶ Further, the Court found that that error had no estoppel effect.¹⁷ “Only the Superior Court, by modifying Hall’s level V sentence, or the Board of Parole, by finally discharging Hall’s parole under 11 *Del. C.*

defendant’s assertion, and the Department of Corrections characterization, which was later found to be incorrect, that he was on probation).

¹³ *Id.* at 890.

¹⁴ *Id.* (“In August 1993, the [Department of Correction issued] a new sentencing status sheet for Hall, which reflected that [his] probationary sentence was closed and that Hall’s parole status became effective, *nunc pro tunc*, as of June 1992.”).

¹⁵ *Id.*

¹⁶ *Id.* at 892.

¹⁷ *Id.*

4347(i)¹⁸, had authority to release Hall from his parole term prior to its maximum expiration date.”¹⁹ The Court held that the Department of Correction did not have the authority to alter Hall’s status to probation upon his release; thus, that error did not have any legal effect.²⁰ Hall was still on parole as his maximum sentence expiration date in 1996 had not yet passed, and thus, the Board of Parole’s revocation of Hall’s parole was “justified.”²¹

9. The situation is much the same here as in *Hall*. As the State points out, “[w]hen the Parole Board issued the violation warrant in 2003, [Defendant] had, by virtue of being on parole for 5 years, completed an additional 5 years of his prison term, leaving 9 years on [Defendant’s] prison sentence.”²² Therefore, Defendant was still on parole in October 2003. Similar to *Hall*, the original incorrect characterization by the Department of Correction that Defendant was on probation for the Robbery Second Degree charge and the subsequent holding of this Court on August 4, 1999 had no effect on Defendant’s parole status. Along those same lines, the Superior

¹⁸ 11 *Del. C.* § 4347(i) provides, in pertinent part: “Except when discharged herein a person on parole or conditional release shall be on parole until the expiration of the maximum term for which the person is sentenced.”

¹⁹ *Hall*, 692 A.2d at 892.

²⁰ *Id.*

²¹ *Id.*

²² Letter to the Court from Loren C. Meyers, Esq. 2-3 (April 24, 2006) (citing 11 *Del. C.* § 4347(i)).

Court's August 4, 1999 order that purported to "discharge" Defendant from probation on the robbery charge also had no legal effect (since Defendant had never been ordered to serve any "probation" in connection with that charge) and could not "supplant" the jurisdiction of the Board of Parole.²³

As Defendant's maximum sentence expiration date is not until the year 2012, he was properly still on parole in 1999 when he incurred new criminal charges. Thus, the Board of Parole had authority to revoke Defendant's parole in January 2005.

10. The above constitutes the findings and rationale that comprise this Court's July 25, 2005, denial of Defendant's Motion for Sentence Modification.

Richard R. Cooch, J.

oc: Prothonotary
cc: Clerk, Supreme Court of Delaware
Loren C. Meyers, Esquire
Bryant F. Jackson
Michael W. Modica, Esquire
Board of Parole

²³ *Id.* at 3.