



IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILBUR MEDLEY,)
)
 Plaintiff-Below,)
 Appellant,)
)
 v.) No. 315, 2021
)
 STATE OF DELAWARE)
)
 Defendant-Below,)
 Appellee.)

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S OPENING BRIEF

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NATURE AND STAGE OF THE PROCEEDINGS

Wilbur Medley was indicted on Burglary Second, Conspiracy Second, Theft over \$1,500 and Criminal Mischief.¹ On June 22, 2021, he pled guilty to Burglary Second Degree. The court immediately sentenced him to 8 years Level V suspended after 2 and 1/2 years for 18 months Level III. That sentence was consistent with the plea agreement and included credit for 210 days incarceration served since the date of his arrest in this case.² Due to a mathematical error, an amended order was issued on June 25, 2021 reflecting that Medley was actually entitled to 576 days credit.³ Then, on June 29, 2021, after the Department of Corrections communicated with court personnel, the judge, *sua sponte*, issued another amended order. This time, the credit was significantly reduced to 13 days.⁴

Subsequently, defense counsel filed a motion in an effort to return the sentence to that set forth on June 25, 2021 which provided Medley with 576 days credit. On September 23, 2021, the judge denied this motion and several *pro se* filings.⁵ This is Medley's Opening Brief in support of his timely-filed appeal from that decision.

¹ A-1, 12-13.

² June 22, 2021 Sentence Order, att. as Ex. A.

³ June 25, 2021 First Amended Sentence Order, att. as Ex. B.

⁴ June 29, 2021 Second Amended Sentence Order, att. as Ex. C.

⁵ September 23, 2021 Order denying Motion for Level 5 Credit, Ex. D.

SUMMARY OF THE ARGUMENT

1. Medley’s June 25, 2021 sentence was imposed pursuant to a negotiated plea agreement and it accurately reflected an intent to grant him credit for all the time he was incarcerated since the date of his initial arrest in this case in March 2019. However, DOC and court administrative personnel frustrated the intent of that sentence from being carried out. Based solely on one DOC employee’s supposition of legal principles, an administrative court employee amended Medley’s sentence and stripped him of 563 days of credit. While the judge signed off on the order, nothing in the record indicates he was made aware of any communications between DOC and court personnel or of the reason for the amendment. In fact, the docket notes that the sentence was “amended to adjust credit time per DOC.”

After the amended order was issued outside Medley’s presence, Medley filed an unopposed motion to restore the sentence to that of June 28, 2021. The judge denied this motion because, after the 563 days credit were stripped away in this case, they were reallocated to one of VOP sentences based on conduct in this case and resolved at a hearing following this case.

Medley’s sentence must be reversed and remanded for a new hearing as the sentencing court abused his discretion in imposing the June 29th Order and denying Medley’s subsequent Motion for Level V credit.

STATEMENT OF FACTS

According to Detective Phillips (“Phillips”) of the New Castle County Police Department, a burglary occurred on February 22, 2019 at 18 Vining Lane in Wilmington, Delaware. The detective claimed in his affidavit of probable cause that his initial investigation led him to discover that several items had been taken from the property. These items included jewelry, a watch, three televisions and several house and car keys. He spoke with two witnesses who claimed to have seen, around the time and in the area of the purported burglary, an older black Audi with tinted windows and front tire rims that did not match the back rims.⁶

Subsequently, Sgt. Breslin (“Breslin”) advised Phillips that an Acura meeting the description given by the two witnesses had been stopped less than a month earlier. The driver and owner of that car was Wilbur Medley (“Medley”) with an address reported to probation as 1014 S. Rodney Street Wilmington, Delaware. In fact, that is the address for Medley’s girlfriend.⁷

Phillips next responded to a school in the area of the purported burglary and obtained surveillance video from the date and time of the alleged incident.

⁶ A-20-21.

⁷ A-21-22.

The footage revealed a car heading in the direction and at the approximate time of the alleged burglary. Significantly, the car appeared to match the description provided to police.⁸

On March 1, 2019, police found an Audi appearing to match the description of the suspicious vehicle. It was parked in front of the address Medley had given probation and it was registered to Medley. Thereafter, police watched him get in the car and drive it with a suspended license. So, they stopped him and took him into custody. A search warrant was subsequently executed at 1014 S. Rodney Street and detectives located one of the stolen televisions and the stolen watch.⁹

During a post-*Miranda* interview, Medley confessed to dropping off an acquaintance named “Billy” near the burglarized house, driving around for about fifteen minutes, then returning after Billy called to pick him up. Medley said he backed in to the driveway where Billy loaded the stolen goods into the car. When asked about the stolen goods, Medley advised that the items included “approximately three televisions, shoes, and some other dumb shit.”¹⁰

Shortly after being arrested in this case, probation filed a report in

⁸ A-23.

⁹ A-24.

¹⁰ A-24.

Sussex County alleging a violation based on Medley's conduct in this case.¹¹

A hearing on this violation report was continued until after the resolution of the charges in this case.¹² In the meantime, Medley was arrested on another set of charges. Accordingly, probation filed a violation report based on Medley's conduct in that case.¹³ The hearing for that report was also continued.¹⁴

On June 22, 2021, Medley pled guilty in this case to Burglary Second Degree and the State entered a *nolle prosequi* on the remaining charges in the indictment. After accepting the plea, the judge sentenced Medley immediately as follows: 8 years Level V suspended after 2 years, 6 months for 18 months at Level III. Before imposing the sentence, however, the judge clarified with the clerk how much credit Medley should receive on his sentence. The clerk informed the judge that Medley was entitled to 210 days.¹⁵ This number included days on which he was held on this case and those on which he was held on the probation which he allegedly violated as a result of his conduct in this and his other "new" case.¹⁶ The State did not oppose providing Medley

¹¹ A-27.

¹² A-36, 43, 48.

¹³ A-31.

¹⁴ A-37, 44, 51.

¹⁵ A-59.

¹⁶ A-81

with this credit on this sentence and the judge provided Medley with credit for all of those days.¹⁷

The following day, an individual from records at the Department of Corrections contacted the New Castle County Prothonotary and stated that Medley had only earned 12 days credit on the sentence in this actual case. She sought clarification as to where the judge came up with the other 198 days for which he granted Medley credit in the June 22nd order.¹⁸ The prothonotary provided DOC with no immediate response. Instead, on June 25, 2021, defense counsel contacted the judge's case manager to inform him that, based on her calculations, she believed Medley was actually entitled to 576 days credit.¹⁹ She set forth all of the dates upon which she relied in her calculations: 3/1/19-3/13/19, 3/19/19-4/28/19, 6/9/19-11/9/20, and 6/16/21-6/22/21. The case manager agreed with the calculations. As a result, the judge signed an order that day amending the sentence to reflect that Medley was entitled, on this sentence, to 576 days credit for time served.²⁰ These periods of incarceration included those in which he was held for the alleged violation based on the conduct in this and the other "new" cases.²¹

¹⁷ A-58-59.

¹⁸ A-82-83.

¹⁹ A-62.

²⁰ June 25, 2021 First Amended Sentence Order, Ex. B

²¹ A-65.

Three days later, on June 28, 2021, an individual from DOC records contacted the prothonotary again. She indicated that DOC had just received the June 25th amended order

changing the credit time from 210 days to 576 credit days. We can only account for credit from 3/1/19-3/13/19 which equals 13 days credit. Was this the court's intention?²²

The judge's case manager responded with the dates used to calculate the time to be credited. The dates aligned with those provided by defense counsel.²³

While the DOC employee agreed that Medley had been incarcerated on those dates, she stated that for all of the time but 13 days, he was held on other cases. Included in those "other cases" were the 3 "VOP cases" and the two "new" cases which were still not resolved. She then posited,

I thought that the offender could only earn time served on the particular case in question not while being held on other cases. Please excuse me if I am incorrect and I apologize if I am.²⁴

To that, the judicial case manager simply responded, "The Court defers to Department of Corrections in terms of where credit time is applied. I will amend the Order to reflect that 13 days (3/1/19-3/13/19) is owed for this particular case (1903000471)."²⁵ Significantly, the judge was not copied on

²² A-66.

²³ A-60-61, 65.

²⁴ A-65.

²⁵ A-64.

any of the e-mail communications between DOC and the court's administrative staff regarding the amendments to Medley's sentence. Nonetheless, as promised, the "Order was amended on June 29, 2021 to reflect that the defendant should only receive 13 days of credit time (3/1/19-3/13/19) and this is the only amount of credit owed to this specific charge."²⁶

Later, in explaining the final amendment to defense counsel, the judicial case manager stated, "[p]er DOC policy, [t]hey can only credit him the time pertaining [to] the case on the plea agreement."²⁷ Again, the judge was not copied on this e-mail and nothing in the record indicates the judge was made aware of any of these communications.

Between July 28, 2021 and August 25, 2021, Medley filed several *pro se* motions for a modification of his sentence.²⁸ Then, on August 27, 2021, the Superior Court in Sussex County held a hearing to address the violation alleged in the March 6, 2019 report that was based on the conduct in this case. After Medley admitted to the violation, his sentences on three cases were revoked and he was resentenced. Specifically, with respect to ID#1009005821, Medley was resentenced on Robbery First as follows: 14 years and two months at Level 5, which takes into consideration time served,

²⁶ June 29, 2021 Second Amended Sentence Order, Ex. C.

²⁷ A-69.

²⁸ D. I. #'s 63, 65-67.

suspended for 18 months Level 3 GPS with the same hold level.²⁹ Medley had originally been sentenced to 16 years in prison on this offense. Thus, the judge apparently gave him credit on this sentence for all time previously served not only on the VOP cases but on the two new cases that had yet to be resolved as well.

After his violation hearing, Medley continued his *pro se* filings in this case.³⁰ Then, on September 17, 2021, Medley's counsel filed a Motion for Level 5 credit.³¹ The motion requested the court to correct the June 29, 2021 amended order that had stripped Medley of all but 13 days of credit. In other words, it sought to reinstate the order issued on June 25, 2021. In making this request, defense counsel explained that it was both her and Medley's understanding at the time Medley entered his plea agreement that he would get credit on this sentence for all the time he spent incarcerated on various cases arising from the conduct in this case.³² These time frames included: 3/1/19-3/13/19, 3/19/19-4/28/19, 6/9/19-11/9/20, and 6/16/21-6/22/21.³³

On September 22, 2021, the court contacted DOC requesting details

²⁹Aug 27, 2021 VOP Sentence Order, ID#'s 1009005821; 1008025826 and 1009001420, Ex. E.

³⁰ D. I. #'s 68-69, 71, 73.

³¹ A-85.

³² A-86-87, 89

³³ A-87.

regarding all of Medley’s “commitments on which [Medley] is being held.” DOC was also asked to “respond directly” to the sentencing judge.³⁴ DOC informed the judge only that Medley was being held on one sentence- the one on this case. The DOC employee stated, “I don’t see any time since his incarceration during 3/1/19 – 3/13/19 that he was held for this particular case.”³⁵

On September 23, 2021, the judge denied defense counsel’s motion as well as each of Medley’s *pro se* filings.³⁶ The judge reasoned that the all of the time requested above 13 days (i.e. 563 days) had already been credited to him in the VOP sentence dated August 27, 2021.³⁷

³⁴ A-98.

³⁵ A-99.

³⁶ September 23, 2021 Order, Ex. D.

³⁷ *Id.*

I. THE JUDGE DENIED MEDLEY HIS CONSTITUTIONAL AND OTHER PROCEDURAL RIGHTS WHEN HE, *SUA SPONTE* AND OUTSIDE MEDLEY’S PRESENCE, AMENDED THE ORIGINAL SENTENCE ORDER TO IMPOSE A HARSHER SENTENCE THAT DID NOT REFLECT THE ORIGINAL INTENT SIMPLY TO COMPLY WITH ONE DOC EMPLOYEE’S EQUIVOCAL UNDERSTANDING OF THE LAW.

Question Presented

Whether a sentencing judge denies a defendant his constitutional and other procedural rights when he, *sua sponte* and outside the defendant’s presence, amends the original sentence order to impose a harsher sentence that does not reflect the original intent simply to comply with one DOC employee’s equivocal understanding of the law.³⁸

Standard and Scope of Review

“This Court reviews sentence modifications for abuse of discretion. Abuse of discretion occurs when, among other things, the trial judge has ‘ignored recognized rules of law or practice so as to produce injustice.’”³⁹ “To the extent a claim involves a question of law, [the Court] review[s] the claim *de novo*.”⁴⁰

³⁸ A-85.

³⁹ *Longford-Myers v. State*, 213 A.3d 556, 558 (Del. 2019) (quoting *Edwards v. State*, 925 A.2d 1281, 1284 (Del. 2007); *Lilly v. State*, 649 A.2d 1055, 1059 (Del. 1994); *Firestone Tire & Rubber Co. v. Adams*, 541 A.2d 567, 570 (Del. 1988)).

⁴⁰ *Downs v. State*, 259 A.3d 1272 (Del. 2021).

Argument

Medley's June 25, 2021 sentence was imposed pursuant to a negotiated plea agreement and it accurately reflected an intent to grant him credit in this case for all the time he was incarcerated since the date of his initial arrest in this case in March 2019.⁴¹ However, DOC and court administrative personnel frustrated the intent of that sentence from being carried out. Based solely on one DOC employee's supposition of legal principles, an administrative court employee amended Medley's sentence and stripped him of 563 days of credit. While the judge signed off on the order, nothing in the record indicates he was made aware of any communications between DOC and court personnel or of the reason for the amendment. In fact, the docket notes that the sentence was "amended to adjust credit time per DOC."⁴²

After the amended order was issued without any hearing and outside Medley's presence, Medley filed an unopposed motion to restore the sentence to that of June 28, 2021. The judge denied this motion because, after the 563 days credit were stripped away in this case, they were reallocated to one of VOP sentences based on conduct in this case and resolved at a hearing following this case.

⁴¹ The sentence imposed on June 22, 2021 was also designed to reflect this intent. However, it included a mathematical error.

⁴² A-84.

Medley’s sentence must be reversed and remanded for a new hearing as the sentencing court abused his discretion in imposing the June 29th Order and denying Medley’s subsequent Motion for Level V credit.

DOC and Superior Court personnel overstepped their authority to decide for the sentencing judge that the June 28, 2021 order was improper.

“[R]eformation of a sentence” is “a judicial function that may not be delegated to be performed administratively by correctional authorities[]”⁴³ and DOC should not be permitted to revoke credit for time served in a manner that “thwart[s] the terms contemplated in a plea agreement.”⁴⁴ Further, “whenever possible, effect should be given to [a sentence’s] intent.”⁴⁵

Here, the June 28, 2021 order was plain on its face. The judge specifically set forth the actual number of days for which Medley should receive credit- 576 days. There can be no mistaking that the intent was for Medley to receive credit for all the time he was incarcerated since his arrest on 3/1/19. So long as it is available, it was within the judge’s discretion to grant Medley that credit.

To the extent one needs to look beyond the language of the sentence, the circumstances surrounding the plea agreement, sentencing, and filing of

⁴³ *Brown v. State*, 793 A.2d 306, 308 (Del. 2002).

⁴⁴ *People v. Torres*, 212 Cal. App. 4th 440, 445 (2012) (internal citations and quotation marks omitted).

⁴⁵ *Nave v. State*, 783 A.2d 120, 123 (Del. 2001).

the motion reveals the intent was to provide Medley credit for 576 days in this case. At the time the plea agreement was entered, both Medley and his counsel were under the impression that he would receive credit on this sentence for all the time he spent incarcerated since the time of his initial arrest in this case.⁴⁶ And, when Medley was initially sentenced pursuant to the agreement, the State did not object to the grant of credit for time that included periods in which he was held on other cases. Likewise, the State had no objection to Medley's motion to reinstate the 576 days credit so long as he did not receive double credit.⁴⁷

Nonetheless, DOC was still unsure of the judge's intent. To her credit, a DOC employee contacted court personnel and specifically asked if it was "the court's intention" to provide Medley with "576 credit days."⁴⁸ But, rather than answering the question directly or allowing the judge to clarify his intent, court personnel provided the dates used in calculating the credit days. When the DOC employee expressed her "thought" that this was an improper sentence, she equivocated by apologizing if she was incorrect. Nonetheless, the administrative court employee responded that "The Court defers to Department of Corrections in terms of where credit time is applied. I will

⁴⁶ A-89.

⁴⁷ A-89.

⁴⁸ A-66.

amend the Order to reflect that 13 days (3/1/19-3/13/19) is owed for this particular case (1903000471).”⁴⁹

The judge was not copied on any of these communications and there is nothing in the record indicating that he consented to or was even aware of this final response. Thus, the only facts in the record as to the imposition of the harsher sentence are: 1) a DOC employee sought the judge’s intent; 2) an administrative court employee explained how credit was calculated; 3) the DOC employee expressed her own understanding of the law; 4) the administrative court employee deferred to the DOC employee’s legal understanding and drafted an amended order consistent with it; 5) the judge signed the order outside the presence of Medley. Essentially, DOC suggested that the judge’s order was improper, and the court employee changed it.

In this case, administrative employees of the court and DOC relied on their own interpretation of law to amend an order for the judge. The reformation of a sentence cannot be delegated to those individuals. Further, when DOC sought the judge’s intent, the record should have been clarified by the judge as to his intent before any imposition, *sua sponte*, of a harsher sentence. In other words, at the very least, the judge should have provided

⁴⁹ A-64.

Medley an opportunity to be heard on the issue before stripping away credit in this case.

DOC and other administrative personnel have no understanding as to the extent such amendments may upset the intent of the parties and/or the judge. For example, if a judge is unsure about the time to be credited pursuant to a plea agreement, the remedy is to reject or undue the agreement, “not to violate it, directly or indirectly”⁵⁰ by imposing a harsher sentence.

In our case, DOC’s actions had consequences that should have been considered by the judge. Interestingly, after defense counsel filed the September 17th motion for Level V credit, the judge reached out to the same individuals at DOC that had communicated with court personnel months earlier. He sought information regarding the various cases on which he had been held.⁵¹ Based on that information, he denied the motion.⁵² He concluded that the 563 days were applied to his VOP sentence imposed at the hearing that occurred after the resolution of this case. However, that time was only available to be applied to the VOP sentence because of the judge’s erroneous June 29th order in this case. As it turned out, credit for time upon

⁵⁰ *Torres*, 212 Cal. App. 4th at 445 (internal citations and quotation marks omitted).

⁵¹ A-98.

⁵² A-99.

which he was held for other cases was all applied to one sentence in one case. Thus, the DOC employee's surmise was apparently incorrect, and the judge did have discretion to apply credit time as he deemed appropriate.

While the practical effect of the structure of the sentencing is typically not considered on appeal, the equities of the situation require it. Medley was sentenced in one manner. Then, without notice, he was stripped of credit. Due to the relation of the VOP cases and new cases, a reasonable person could conclude that the various permutations of the sentencing schemes played a role in his decision to plead guilty in this case.

The sentencing judge denied Medley his right to be present with his counsel when he, *sua sponte*, increased his sentence based on a legal determination.

“It is well established that a defendant has a fundamental right to be present at the imposition of a final sentence following a criminal conviction.”⁵³ There are, of course, exceptions to this axiom. For example, Superior Court Criminal Rule 36 allows the court to correct a sentence in order

⁵³ *Jones v. State*, 672 A.2d 554, 555 (Del. 1996) (citing Super.Ct.Crim.R. 43(a); *Hooks v. State*, 429 A.2d 1312 (Del. 1981); *Fullman v. State*, 431 A.2d 1260 (Del. 1981); *Shy v. State*, 246 A.2d 926 (Del. 1968); *Shaw v. State*, 282 A.2d 608 (Del. 1971); *United States v. Behrens*, 375 U.S. 162 (1963)).

to address a “clerical mistake” that appears on the face of the record even without the defendant’s presence.⁵⁴

Here, when the judge stripped Medley’s time served credit down to 13 days, he did not do so pursuant to Rule 36. This was not a clerical error in transcription. Nor was it a mathematical error. “The Superior Court’s amended sentence constituted a substantive legal change in [Medley]’s sentence, rather than a mere correction to reflect the actual sentence imposed in [Medley]’s presence in open court.”⁵⁵ Thus, notwithstanding the existence of any other error, this Court must reverse and remand this case “[b]ecause [Medley]’s right to be present personally and with counsel at his sentencing were violated[.]”⁵⁶

⁵⁴ *Jones*, 672 A.2d at 555 (citing *Gibbs v. State*, 229 A.2d 502, 504 (Del. 1967) (internal quotation added); Super.Ct.Crim.R. 36; Super.Ct.Crim.R. 35; *United States v. Werber*, 51 F.3d 342, 347 (2d Cir.1995)).

⁵⁵ *Jones*, 672 A.2d at 556.

⁵⁶ *Fullman*, 431 A.2d at 1264–65.

CONCLUSION

For the reasons and upon the authorities cited herein, Medley's sentence must be reversed and remanded and a sentencing hearing must be conducted upon notice, with Medley and his attorney present.

Respectfully submitted,

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