

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TROY D. CURTIS,	§	
	§	No. 359, 2008
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. 0706025530
Appellee.	§	

Submitted: October 3, 2008
Decided: December 18, 2008

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 18th day of December 2008, upon consideration of the briefs on appeal and the Superior Court record, it appears to the Court that:

(1) On November 26, 2007, the appellant, Troy D. Curtis, pled guilty to Resisting Arrest. On February 1, 2008, the Superior Court sentenced Curtis, effective October 10, 2007, to two years at Level V with credit for twenty-six days, suspended after six months for one year at Level III.

(2) On April 24, 2008, the Superior Court found Curtis guilty of violation of probation. The Superior Court sentenced Curtis to two years at

Level V suspended after successful completion of a substance abuse treatment program for the balance at either Level IV or III.

(3) On June 5, 2008, Curtis filed a motion for reduction of sentence. Curtis argued that he was entitled to credit for time served at Level V on the original sentence. By order dated June 25, 2008, the Superior Court denied the motion, holding that Curtis was “subject to the full term of incarceration after a violation is adjudicated without credit for time served previously.”

(4) Curtis filed an appeal from the Superior Court’s denial of his motion for reduction of sentence. On appeal, Curtis argues, and the State agrees, that he should receive credit for time served at Level V on the original sentence.¹

(5) The parties’ position is well-taken. After Curtis’ probation violation, the Superior Court had the authority to reimpose the two year sentence on the original conviction but should have credited Curtis with all time served at Level V on the original sentence.²

¹ The parties disagree, however, as to the amount of credit due. Curtis contends that he is eligible to receive “six months” of Level V credit. The State contends that Curtis is eligible for a credit of “169 days.”

² See *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999) (holding that a defendant must be given Level V credit for all prior time actually served at Level V incarceration when further incarceration is imposed after a probation violation).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is REVERSED and this matter is REMANDED to the Superior Court for resentencing, including the determination and application of credit for all time that Curtis served at Level V on the original sentence. Jurisdiction is not retained. The mandate shall issue forthwith.

BY THE COURT:

/s/ Randy J. Holland
Justice