

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEROME FREEMAN,	§
	§ No. 237, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ C.A. No. 05M-05-008
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 7, 2005

Decided: November 30, 2005

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices

ORDER

This 30th day of November 2005, upon consideration of the briefs of the parties, it appears to the Court that:

(1) The defendant-appellant, Jerome Freeman, filed an appeal from the Superior Court's May 10, 2005 order denying his petition for a writ of habeas corpus. The plaintiff-appellee, the State of Delaware, subsequently filed a motion to affirm. In this Court's August 15, 2005 Order denying the motion to affirm, we directed the State to address in its answering brief Freeman's claims that he was improperly given a 3-year, rather than a 2-year, Level V sentence for Forgery in the Second Degree and was

improperly given a 12-month Level IV sentence for a subsequent violation of probation (“VOP”).¹

(2) We conclude that the judgment of the Superior Court insofar as it addresses Freeman’s petition for a writ of habeas corpus must be affirmed on the basis of and for the reasons set forth in its decision dated May 10, 2005. We find no error or abuse of discretion on the part of the Superior Court in denying Freeman’s petition for a writ of habeas corpus on jurisdictional grounds.

(3) However, in light of the State’s concession that Freeman’s April 15, 2005 VOP sentence is illegal because the Superior Court incorrectly imposed 12 months, rather than 6 months, of Level IV probation,² in the interest of justice this matter should be remanded to the Superior Court at this time for correction of that sentence.³

¹ *Freeman v. State*, Del. Supr., No. 237, 2005, Holland, J. (Aug. 15, 2005).

² Del. Code Ann. tit. 11, § 4204 (1) (2001).

³ We note that Freeman’s claim that he was improperly sentenced in 1996 to 3 years Level V incarceration is factually incorrect. While a 1997 Order of this Court mistakenly reflects that a 3-year sentence was imposed, Freeman’s original sentencing order, and at least one subsequent court order, reflect that only a 2-year sentence was imposed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court insofar as it addresses Freeman's petition for a writ of habeas corpus is AFFIRMED. This matter is hereby REMANDED to the Superior Court for correction of Freeman's April 15, 2005 VOP sentence. Jurisdiction is not retained.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice