SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

March 7, 2008

John T. Snead
Sussex Correctional Institution
23203 DuPont Boulevard
P. O. Box 500
Georgetown, DE 19947

RE: Defendant ID No. 0105002628
Criminal Action No. IS 01-05-0351(R1)
Possession with the intent to deliver cocaine

Dear Mr. Snead:

You have filed a Motion for Postconviction Relief. It is denied, but the Court is correcting its sentence of November 8, 2006 to include an additional 30 days of credit time that you allege you did not receive. This 30 days was the time you spent at the Boot Camp Tune-up in lieu of a violation of probation which would have resulted in a five-year mandatory sentence. Unfortunately, as discussed below, you later violated probation triggering the five-year mandatory sentence.

HISTORY

On September 7, 2001, you entered guilty pleas to several offenses pursuant to negotiations with the Prosecutor's office. On IS01-05-0349, you entered a guilty plea to trafficking in cocaine. You received a three-year mandatory sentence for the traffic offense.

On IS01-05-0352, you entered a guilty plea to possession of a firearm by person prohibited and received a four-year suspended sentence.

As to IS01-05-0358, the resisting arrest, you received a one-year suspended sentence.

Pursuant to the negotiations, you also pled guilty to IS01-05-0351 which was a possession with the intent to deliver cocaine. Based upon your prior record, you faced a minimum mandatory of five years incarceration on this sentence, up to ten years. The State and the

defense recommended that you be deferred as to this sentence and placed in the Boot Camp Diversion program. On September 7, 2001, a full colloquy took place between you and Judge Richard F. Stokes. You were aware of the consequences of a violation of the Boot Camp Diversion program. Judge Stokes informed you that you could receive up to ten years incarceration and that a Judge would be required to put you in jail for five years if you were then violated. You were also made aware that you would not receive credit time for the time that you were actually in the Boot Camp program (i.e., the six months). You were also informed by Judge Stokes that if you failed to successfully complete the program that "there is a huge downside and the judges have no choice".

You served the three years mandatory on the trafficking and you completed the six months incarceration portion of the Boot Camp Diversion sentence. Subsequently, a violation of probation was filed and to resolve same, you and the State agreed upon a "tune-up" at the Boot Camp for a period of thirty (30) days, which would resolve the violation without triggering re-sentencing to the mandatory sentence.

Unfortunately, another violation arose and the State was not willing to allow the matter to be resolved with a tune-up, thereby triggering a violation of probation and requiring the Court to sentence you on IS01-05-0351 by vacating the diversion order. I sentenced you to a period of eight years with credit for 20 days, suspended after serving a five-year mandatory sentence for a period of 18 months Level 3.

Subsequently, your attorney filed a Motion to declare the eight-year sentence received as an illegal sentence pursuant to Superior Court Rule 35. By correspondence dated March 26, 2007 to Andre M. Beauregard, Esquire, your then attorney, I denied the Motion. The sentence that was imposed on November 8, 2006 was within the statutory guidelines for a possession with the intent to deliver cocaine and the five-year mandatory was required. In other words, as Judge Stokes informed you in 2001, the Court had no choice but to impose the five-year mandatory sentence.

The colloquy between this Judge and Mr. Beauregard on November 8, 2006 indicates that Mr. Beauregard argued that the Court did not have to find you in violation of probation because the Court could basically ignore your admission that you were in violation of probation. I informed Mr. Beauregard that it would be a violation of the Court's oath to uphold the law to ignore this violation of probation. Again, the five years you received on November 8, 2006 was a mandatory sentence which had to be imposed.

John T. Snead
March 7, 2008

RULE 61 ALLEGATIONS

As I interpret your complaints, you allege the following as grounds for Rule 61 relief:

(a) You allege that in addition to the thirty days credit due you for the Boot Camp "tune-up", you should receive credit for the six months incarcerative portion of the Boot Camp sentencing order;

(b) You allege that Judge Stokes modified the Aftercare portion of the Boot Camp sentence from 2½ years to 1½ years of probation, and that, therefore, when you were violated, the Court had no jurisdiction because the 1½ years had expired;

(c) Alternatively, you allege that modifications of the Boot Camp statute following SB50 which reduced the period of probation following completion of the Boot Camp incarceration from a period of not less than 2½ years to a period of 1½ years (see 11 Del. C. §6712(d)(1)) should have automatically reduced your probationary period from 2½ years to eighteen months.

PROCEDURAL BARS

I find that the present petition is procedurally barred based upon Superior Court Criminal Rule 61(i)(1). Deferred sentence was entered on September 7, 2001. That was vacated on November 8, 2006, and therefore you were serving the sentence imposed on November 8, 2006. Sentences occurring after July 1, 2005 have a one-year period in which you may file for relief under Rule 61.

It is also procedurally barred in that you have not asserted any grounds under Rule 61(i)(3) as to why issues which you argue were presented to the Court on November 8, 2006 were not appealed to the Delaware Supreme Court.

The bars to relief as contained in Rule 61(i)(5) are not applicable because there was not a miscarriage of justice due to a constitutional violation, nor as discussed below is there any validity to the claim the Court lacked jurisdiction.

ALTERNATIVE DISCUSSION

The sentence you entered in 2001 exposed you to the statutory maximum that was in effect in 2001. The law in place at the time required a Boot Camp Diversion sentence to have 2½ years of supervision or probation. There is nothing in the Court's file which indicates there was ever a modification by Judge Stokes reducing the period of 2½ years to 1½ years. You are mistaken as to this claim.

The statutory changes reduced the Boot Camp Diversion supervision from 2½ years to 1½ years but the amendment does not automatically and retroactively modify all previous sentences imposed under the old statute. *Richardson v. State*, Del. Supr., No. 405, Steele, C.J. (Dec. 16, 2005). In other words, the sentence imposed pursuant to the statute permitting 2½ years of probation or supervision following the incarcerative portion of the Boot Camp remained in effect unless modified by a subsequent Court Order. Again, that was not done. The 2½ years of post Boot Camp probation was valid. On June 21, 2006, you were arrested for the violation which triggered the present sentence. It appears you were arrested 1 year 7 months and 8 days after leaving Boot Camp.

Finally, you cite to 11 Del. C.§6710 as a legal basis that you should receive credit for the six months that you were incarcerated in the Boot Camp program. 11 Del. C.§6710 is not the statute under which you were sentenced. You were sentenced pursuant to 11 Del.C. §6712, the Boot Camp Diversion program. Specifically, 11 Del.C. §6712(h), you are not to receive any credit time for time spent at the Boot Camp. That is the law, and you were aware of it pursuant to the colloquy with Judge Stokes when you originally entered the plea.

In summary, your Motion for Rule 61 relief is denied. The sentence imposed on November 8, 2006 under which you must serve five years was the lowest sentence the Court could impose. Again, you were aware of that based upon the colloquy with Judge Stokes in 2001.

Finally, I note that the sentencing order of November 8, 2006 is corrected to include an additional thirty (30) days previously served in order to pick up the Boot Camp "tune-up" time.

IT IS SO ORDERED.

Yours very truly,

T. Henley Graves

THG:baj
cc: Prothonotary
Department of Justice