

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

P.O. BOX 746
COURTHOUSE
GEORGETOWN, DE 19947

August 19, 2003

Jerry Evans
Sussex Correctional Institution
P.O. Box 500
Georgetown, DE 19947

RE: State v. Evans,
Def. ID#s 9605014140 and 0108008844

DATE SUBMITTED: July 16, 2003

Dear Mr. Evans:

Defendant Jerry Evans ("defendant") has filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The motion raises legal issues which are barred procedurally either because this Court previously has addressed them or because defendant failed to raise them earlier, and defendant has failed to establish that exceptions to the bars exist. Super. Ct. Crim. R. 61(i). However, because the merits of defendant's arguments are easily addressed and because defendant does not seem to understand how probation works, I examine his arguments below.

In May, 1996, defendant pled guilty to a charge of burglary in the third degree in the case of State v. Evans, Def. ID# 9605014140. He was sentenced, on July 12, 1996, to three years at Level 5, with credit for time served, suspended for two years at Level 2 probation, consecutive to another sentence he was serving. Defendant was violated and resentenced on this case on January 27, 2000; March 9, 2001; July 13, 2001; and October 1, 2001. The Court modified this sentence on May 28, 2002, to provide that if he did not complete the Key Program and maxed out, then he must serve six months at Level 3 probation pursuant to 11 Del. C. § 4204(1). Finally, defendant was violated on this sentence on April 25, 2003, and was sentenced to sixty days at Level 5, with credit for time served. He now has completed the sentence in this case.

On November 21, 2001, in the case of State v. Evans, Def. ID# 0108008844, defendant pled guilty to possession of cocaine. He was sentenced on that date to one year at Level 5, suspended for one

year at Level 2 probation. The sentencing order states that this probation was consecutive to any other probation defendant was now serving. In April, 2003, defendant was found in violation on both this case and the case described above. As noted earlier, he was given sixty days at Level 5 on State v. Evans, Def. ID# 9605014140. As to the case of State v. Evans, Def. ID# 0108008844, he was sentenced to one year at Level 5 and upon successful completion at Level 5 Key Short Term Program, the balance is to be suspended for one year at Level 3 Aftercare.

In his current motion, defendant argues that his plea agreement required his Level 2 probation to run consecutive to his Level 3 probation and since this Court has violated him on the Level 2 probation, his plea agreement was unfulfilled. He also argues that the plea agreement required him to do Level 2 probation; by being sentenced to Level 5, he is subject to cruel and unusual punishment. Finally, he argues that since his plea now has been revoked, he is entitled to a reopening of his case and a jury trial.

Defendant's arguments are legally meritless. He was sentenced to a period of incarceration which was suspended for probation. Probation is a state of grace and can be revoked at any time. Williams v. State, 560 A.2d 1012, 1015 (Del. 1989). The Court can revoke a period of probation which defendant has not yet begun to serve. Id.; Jones v. State, 784 A.2d 1080 (Del. 2001); Parker v. State, Del. Supr., No. 83, 1996, Berger, J. (August 2, 1996) at 3. Upon a finding of a probation violation, the Court is authorized to reimpose any previously suspended prison term. Gamble v. State, 728 A.2d 1171, 1172 (Del. 1999); Gaines v. State, 803 A.2d 428 (Del. 2002).

In this case, defendant's plea agreement has been fulfilled. He is not serving the original probation period because he violated his probation. His actions, not the State's, resulted in his current incarceration.

Defendant's claims are meritless. I deny the pending motion.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary's Office
Public Defender's Office
Attorney General's Office