

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
v.)	ID: 0202008455
)	
THURMAN BOSTON,)	
)	
Defendant.)	

ORDER

Upon Defendant's Motion to Correct an Illegal Sentence – DENIED

1. On May 14, 2008 Defendant, through counsel, filed a motion challenging the sentence he is serving, which was imposed under 11 *Del.C.* §4204(1).
2. Originally, Defendant was sentenced to five years in prison, followed by six months of Level 3 probation. The five years was mandatory under the habitual offender statute, 11 *Del.C.* §4214(a). The probation was imposed under 11 *Del.C.* §4204(1). The sentencing statutes' terms mandated the sentencing rubric the court used.
3. Because Defendant was sentenced under 11 *Del.C.* §4214(a), no part

of the sentence could be suspended. And, because the prison sentence exceeded one year, 11 *Del.C.* §4204(l) required the court to add six months of transition probation.

4. Defendant served the prison sentence and he was released to the transition probation. As he has always done since he began his criminal career more than 20 years ago, Defendant violated probation. This time he used drugs, failed to report for office visits, missed a curfew, got arrested, and so on.

5. Finally, on May 14, 2008, the court sentenced Defendant to serve six months in prison because he violated the 11 *Del.C.* §4204(l) sentence.

6. Defendant, through counsel, submits that he served the entire sentence imposed under 11 *Del.C.* §4214(a) “and only the probation that followed can be modified by the Court.” Counsel asks the court to “modify Defendant’s sentence by striking that portion of the order, which commits him to custody of the Department of Correction[] for 6 months at Level 5.”

7. In *pro se* filings, Defendant characterizes his current sentence as illegal. He argues that he is serving a transition sentence at Level 5 “a transitional sentence at level 5 making a maximum five year statutory sentence 5½ years 6 months over the legal limit.”

8. In effect, 11 *Del.C.* §4204(l) extends maximum sentences, such as the one imposed on Defendant under 11 *Del.C.* §4214(a), by six months.

9. Specifically, 11 *Del.C.* §4204(l) provides:

[W]henever a court imposes a period of incarceration at Level V custody for . . . 1 year or more, then that court must include as part of its sentence a period of custodial supervision at either Level IV, III or II for a period of not less than 6 months to facilitate the transition of the individual back into society. The 6-month transition period required by this subsection may, at the discretion of the court, be in addition to the maximum sentence of imprisonment established by the statute.

10. Eleven *Del.C.* §4204(l) is awkward, but reading the statute as a whole and in context, the General Assembly's intent is clear.

11. The legislature does not want inmates who have been in prison for a year or more to be released to the street without serving at least six months of transition probation. The legislature did not intend, however, to limit this sentence to probation so that offenders like Defendant could ignore it with impunity. Hence, 11 *Del.C.* §4204(l) refers to "custodial supervision," which "may . . . be in addition to the maximum sentence of imprisonment established by the statute."

12. By his letter dated June 24, 2008, the Attorney General agrees with this interpretation.

13. Although, the sentence Defendant is serving was imposed directly

under 11 *Del.C.* §4204(1), the court assumes without deciding that it could have indirectly sentenced Defendant to six months in prison for contempt, because Defendant violated his probation.

14. Be that as it may, when Defendant violated the transition sentence imposed under 11 *Del.C.* §4204(1), he potentially subjected himself to at least a six month prison sentence. Based on Defendant's habitual offender status, and his history on probation and while serving the current sentence, the court viewed a further probation sentence as futile.

For the foregoing reasons, Defendant's motions to correct or modify his current sentence are **DENIED**.

IT IS SO ORDERED.

Date: July 7, 2008

/s/ Fred S. Silverman

Judge

oc: Prothonotary (Criminal)
pc: Stephen Walther, Deputy Attorney General
John Edinger, Jr., Esquire
Thurman Boston, H.R.Y.C.I.