

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

STATE OF DELAWARE,)	
)	
v.)	ID#: 0710023826
)	IN 08-06-2477
SHELTON D. MOORE,)	IN 08-05-0539
Defendant.)	

Submitted: March 11, 2009¹
Decided: May 29, 2009

ORDER

**Upon Defendant’s Motion for Credit for Good Time and Time Served –
GRANTED in part, *DENIED* in part**

1. On October 7, 2008, Defendant pleaded guilty to, among others, two burglary second degree charges. On December 5, 2008, Defendant was sentenced to one year at Level V for each burglary charge.
2. The sentencing order specifically provides that the sentence is “a mandatory sentence pursuant to 11 *Del. C.* § 825.”²
3. Eleven *Del. C.* § 825 does not specifically prohibit a defendant from

¹ Defendant filed his motion on January 30, 2009, however, the motion was not received in chambers until March 11, 2009.

² Pursuant to 11 *Del. C.* § 234, “[w]hen used for the purpose of describing or requiring a sentence . . . the terms ‘minimum,’ ‘mandatory,’ ‘minimum mandatory’ and ‘mandatory minimum’ . . . [are synonymous].”

earning “good time” credit. That statute does, however, prohibit the court from *suspending* a mandatory term.³

4. Eleven *Del. C.* § 4381 specifically allows “good time” credit on “[a]ll sentences imposed for any offenses other than a life sentence,” and unless otherwise statutorily prohibited.⁴

5. The language used in the sentencing order, therefore, does not in any way trump a statutory allowance for “good time” credit.

6. Therefore, Defendant is allowed by law and by the sentencing order to earn “good time” credit towards early release. The Department of Correction shall credit Defendant accordingly.

7. Defendant has also requested credit for time served, with October 17, 2007 as his effective sentencing date. DOC lists Defendant’s effective sentence date as May 13, 2008. After careful examination of the record, it appears to the court that, under ID No. 0710030594, Defendant completed a one year sentence on September 4, 2008. Therefore, the December 5, 2008 sentence is effective as of September 4, 2008. Concurrent with this order, the court will issue a revised sentencing order.

³ *Id.* (“while minimum, mandatory, or mandatory minimum sentences are not subject to suspension by the court, all are subject to good time eligibility” except life sentences and statutory prohibitions).

⁴ *See State v. Schmitz*, 2002 WL 484642, *3 (Del. Super. Mar. 28, 2002).

8. For the foregoing reasons, Defendant's request for good time credit is **GRANTED** and Defendant's request for time served is **DENIED**, except DOC shall award earned "good time" credit as called for by the lawful sentence order.

IT IS SO ORDERED.

/s/ Fred S. Silverman

Judge

cc: Prothonotary (criminal)
Susan Dwyer, Deputy Attorney General
Shelton Moore