

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

STATE OF DELAWARE,	:	
	:	
	:	Supreme Court No. 168, 2009
v.	:	Superior Court No. 0402011241
	:	
DONALD WILLIAMSON,	:	
	:	
Defendant.	:	

Submitted: December 9, 2009  
Decided: December 17, 2009

**ORDER ON REMAND**

Gregory E. Smith, Esquire, Department of Justice, Wilmington, Delaware,  
Attorney for the State.

Bernard J. O'Donnell, Office of the Public Defender, Wilmington,  
Delaware, Attorney for Defendant.

PARKINS, J.

This 17th day of December 2009, it appears to the Court that:

1. This matter requires the Court to determine the amount of time Williamson is entitled to have credited against a sentence imposed upon him after a conviction for conspiracy second degree. Wilmington Police arrested Williamson on February 19, 2004 in connection with a robbery. He was held at Howard R. Young Correctional Institution (“HRYCI”) from the date of his arrest until February 24, 2004. On August 17, 2004, Williamson pled guilty to second degree conspiracy and the Court sentenced him to two years at Level V, suspended for 12 months at Level II, with credit for 11 days previously served.

*Williamson’s incarceration history*

2. Williamson’s history of incarceration since his conspiracy conviction is quite lengthy. On December 8, 2004, Williamson was arrested for criminal impersonation and possession of cocaine, and held at HRYCI for one day. He was also held at HRYCI in default of bond on those charges from June 1, 2005 until June 7, 2005. Williamson pled guilty to the possession charge and the State entered a *nolle prosequi* on the impersonation charge.

3. The possession conviction was then the basis for a violation of probation relating to Williamson's conspiracy conviction. On June 15, 2005, the Court sentenced Williamson to 23 months at Level V, suspended for 1 year at Level IV home confinement.

4. Williamson again violated his probation for his conspiracy conviction, and the Court sentenced him on August 31, 2005 to 23 months at Level V, suspended for 23 months at Level IV. Pursuant to that sentencing order, Williamson was held at the Sussex Violation of Probation Center ("SVOP") and the Central Violation of Probation Center ("CVOP") from August 22, 2005 until January 11, 2006.

5. On March 1, 2006, Williamson was arrested on an escape charge. The escape charge resulted in another violation of probation for Williamson's conspiracy charge. On March 7, 2006, the Court sentenced him to 22 months at Level V, suspended for 22 months at Level IV. Williamson pled guilty to second degree escape and the Court sentenced him to 2 years at Level V, followed by 6 months at Level IV (concurrent with his probation for his conspiracy sentence), effective March 1, 2006. In accordance with this sentence, Williamson was held at HRYCI from March 1, 2006 until December 6, 2007, and then held at SVOP from December 7, 2007 through May 14, 2008.

6. On August 6, 2008 Williamson was arrested for second degree assault and various other charges and held at HRYCI in connection with those charges until November 21, 2008.

7. Williamson was arrested on December 15 and held at HRYCI and SVOP until December 23, 2008 for a violation of probation on his conspiracy conviction. On December 23, 2008, the Court sentenced Williamson to 2 years at Level V, suspended for 60 days at Level IV, followed by the balance of the two years at Level III.

*Williamson's March 4, 2009 sentence*

8. Williamson was arrested and incarcerated on February 25, 2009 for shoplifting. On March 4, 2009, the Court sentenced Williamson on his sixth violation of probation relating to the conspiracy conviction.<sup>1</sup> The Court sentenced Williamson to 2 years at Level V, with credit for 9 days previously served. Williamson appealed his sentence.

9. On appeal, the Delaware Supreme Court held that Williamson should be resentenced to “no more than twenty-two months incarceration, with a

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<sup>1</sup> For a complete history of Williamson's violations of probations and other charges over the past five years, see *Williamson v. State*, 2009 WL 2959562, at \*1-2 (Del. Supr.).

credit of eighteen days toward that sentence.”<sup>2</sup> The Supreme Court further held that on remand this Court should determine whether Williamson is entitled to any additional credit time.<sup>3</sup>

*Credit for time spent at Level IV VOP Center*

10. On remand, the parties have submitted supplemental briefing on the issue of the credit time owed to Williamson. According to the State’s calculation, Defendant is entitled to 16 days. Williamson claims, however, that he is entitled to approximately 20 months.

11. The primary dispute between the State and Williamson is whether the Court should give Defendant credit for the time he served at Level IV VOP Centers (SVOP and CVOP). The State “does not concede” that Williamson is entitled to credit for time spent at the Level IV VOP Centers.<sup>4</sup>

Williamson points out, however, that the State’s position “flatly contradicts the position that the State has recently taken in prior cases concerning Level 4 VOP.”<sup>5</sup>

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<sup>2</sup> *Id.* at \*5 (holding that the trial court erred by sentencing Williamson to two years because his sentence had been reduced to twenty-two months on a prior violation of probation).

<sup>3</sup> *Id.* at \*5.

<sup>4</sup> State’s Brief on Remand, D.I. 105, at 10.

<sup>5</sup> Defendant’s Response, D.I. 109, at 3.

12. In *Anderson v. State*, the defendant claimed “that he should receive Level V credit for time he spent at a Level IV VOP Center because that facility, while classified as Level IV, is as restrictive as Level V incarceration.”<sup>6</sup> The State agreed with Anderson’s position, “noting that it ha[d] conceded as much in prior cases.”<sup>7</sup> Specifically, the Supreme Court stated that:

The State’s view is that inmates should receive Level V credit time for time served at a VOP Center because the conditions of confinement are substantially more restrictive than those found in the other Level IV options.<sup>8</sup>

As a consequence, the Supreme Court remanded the case to the trial court “for the issuance of sentencing that gives Anderson Level V credit for the time that he spent at the Level IV VOP Center.”<sup>9</sup>

13. The State does not explain why it now seeks to reverse the position it took before the Supreme Court in *Anderson*. Certainly there has been no change in the pertinent statutory scheme. If the State feels its position in *Anderson* was wrong, the appropriate forum to remedy that is the Supreme Court, not here. Accordingly, this Court will follow the method in *Anderson* and will give Williamson credit for time served at Level V and Level IV VOP Centers in connection with his conspiracy conviction.

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<sup>6</sup> *Anderson v. State*, 2006 WL 3931460, at\*1 (Del. Supr.).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

Williamson's credit time

14. The parties agree that Williamson is not entitled to credit for time he served on other convictions. The time to which he is entitled credit against his conspiracy conviction is highlighted on the following chart:

<i>Dates</i>	<i>Credit time</i>	<i>Location</i>	<i>Charge</i>	<i>Reference paragraph</i> <sup>10</sup>
<b>2/19/04-2/24/04</b>	<b>6 days</b>	<b>HRYCI</b>	<b>Conspiracy</b>	<b>1</b>
12/8/04-12/8/04		HRYCI	Possession/ criminal impersonation	2
6/1/05-6/7/05		HRYCI	Possession/ criminal impersonation	2
<b>8/22/05-1/11/06</b>	<b>4 months 20 days</b>	<b>SVOP/ CVOP</b>	<b>Conspiracy</b>	<b>4</b>
3/1/06-12/6/07		HRYCI	Escape	5
12/6/07-5/14/08		SVOP	Escape	5
8/6/08-11/21/08		HRYCI	Assault	6
<b>12/15/08- 12/23/08</b>	<b>9 days</b>	<b>HRYCI/ SVOP</b>	<b>Conspiracy</b>	<b>7</b>
<b>2/25/09-present</b>	<b>9 months 21 days</b>	<b>HRYCI</b>	<b>Conspiracy</b>	<b>8</b>

Total credit earned: **14 months 26 days**

15. Defendant has already received some of the credit he earned, which must be offset against the credit earned. The Court credited Williamson

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<sup>10</sup> This column indicates the paragraph in this order which refers to the given incarceration time.

with 11 days in its August 17, 2004 sentencing order even though he had only been incarcerated on the conspiracy charge for 6 days up to that point. The Court will not count all 11 days as credit previously given because doing so would be to the detriment of Williamson.

16. In addition, the Court reduced Williamson's sentence by one month on June 15, 2005 and by another month on March 7, 2006. It is impossible to tell from the record whether the Court was reducing Williamson's sentence in those instances or simply crediting him for time previously served. The Court will therefore give Williamson the benefit of the doubt and will treat these two months as reductions of sentence, not credit given.

17. Williamson has earned 14 months and 26 days of credit time and the Court has previously given him 6 days of credit. Therefore Williamson is entitled to 14 months and 20 days credit time.

### Conclusion

For the reasons stated above, Williamson's sentence is hereby modified to 22 months at Level V with credit for 14 months and 20 days.

**IT IS SO ORDERED.**<sup>11</sup>

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<sup>11</sup> This order resolves Williamson's September 28, 2009 Motion for Reconsideration, his November 24, 2009 Motion for Modification of Sentence, and his December 9, 2009 Petition for a Writ of Habeas Corpus.



cc: Prothonotary  
Investigative Services  
Supreme Court (via Lexis Nexis)