

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

T. HENLEY GRAVES
RESIDENT JUDGE

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

May 12, 2010

N440 - State Mail
Michael S. Lewis
Sussex Correctional Institution
P. O. Box 500
Georgetown, DE 19947

RE: State v. Lewis
Defendant ID No. 0706015657

Dear Mr. Lewis:

The Court is in receipt of your second Motion for Correction of an Illegal Sentence filed on May 5, 2010. I have reviewed your Motion together with your file and the Motion is denied.

On April 4, 2008, you received the following sentence:

(a) IS07-06-1211 - Delivery of a Controlled Substance. You received a sentence of five (5) years which was to be suspended after serving two (2) years and the successful completion of the Greentree program. You were then to go to the CREST program at Level 4, followed by eighteen (18) months Level 3 CREST Aftercare.

(b) IS07-08-0002 - You were sentenced on aggravated menacing to five (5) years with credit for one (1) day, suspended for two (2) years Level 3 Probation. That probation was to be the Level 3 Aftercare following CREST.

(c) IS07-06-1213 - Maintaining a Vehicle. You were sentenced to three (3) years suspended for eighteen (18) months Level 3 CREST Aftercare.

Your behavior resulted in being kicked out of the Greentree program. Mental health issues were attributed to the behavioral problems that you had in Greentree. The Court and your attorneys at the Public Defender's Office were concerned about you and requested that we get a report from the Delaware Psychiatric Center in order to provide guidance as to re-sentencing.

Unfortunately for you, your behavior at the Delaware Psychiatric Center was horrible and was primarily attributed to your antisocial personality disorder. These matters were discussed on the record on November 17, 2009, when you were resentenced. The Court had the benefit of not only the DPC report as to mental health issues, but also as to your conduct.

Therefore on November 17, 2009, the April 4, 2008, sentence was modified as follows:

(a) On 07-06-1211, you were sentenced effective April 4, 2008, the original sentence date, to five (5) years.

(b) As to 07-08-0002, you were likewise sentenced to five (5) years with credit for one (1) day.

(c) As to 07-06-1213, you were sentenced to three (3) years suspended upon completion of the Level 5 Greentree program for one (1) year Level 3.

In your Motion for Correction of an Illegal Sentence, you alleged that the Court could not resentence you because you had never gotten to probation, and therefore you could not have violated probation. You are simply mistaken.

The Court may revoke your probation at any time and it does not matter if you did not yet reach your probation at Level 3. It was your conduct at Level 5, whether you were housed in a prison facility or housed at DPC, that caused your headache. See *Perry v. State*, 741 A.2d 359 (Del. 1999); *Williams v. State*, 560 A.2d 1012 (Del. 1989); *State v. Davis*, 2007 WL1786154 (Del. Super. June 20, 2007).

Therefore, the sentence imposed November 17, 2009, was not illegal and your Motion is denied. I also note that this does not breathe new life into the sentence imposed on November 17, 2009, and that the appeal time on that sentence has long run.

Defendant's Motion for Correction of an Illegal Sentence is denied.

IT IS SO ORDERED.

Yours very truly,

/s/ T. Henley Graves

T. Henley Graves

THG:baj

cc: Prothonotary
Department of Justice
Robert H. Robinson, Jr., Esquire