

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

ADOLPH CONOVER	)	
	)	
Defendant Below,	)	
Appellant,	)	Cr. ID: 9604003388
	)	
v.	)	
	)	
	)	
STATE OF DELAWARE,	)	Cr.A.No.VN98-01-0667 through
	)	0669; VN98-03-0988, 0989
Plaintiff Below-	)	
Appellee.	)	

Date Submitted: December 19, 2002  
Date Decided: January 27, 2003

Gebelein, Judge.

**FINDINGS ON REMAND**

Now this 27 day of January, 2003, upon remand from the Supreme Court for factual findings, and upon review of the defendant-appellant, Adolph Conover's inmate records, the Court finds as follows:

1. Adolph Conover ("Defendant") filed an appeal from this Court's denial of his motion for correction of sentence. In support of his appeal, Defendant claims that the sentence imposed on December 22, 1999 for violation of probation is in violation of double jeopardy principles because he was not given the appropriate credit for all of the time that he previously served at Level V on his underlying charge of unlawful sexual contact second.
2. On December 19, 2002, the Supreme Court remanded Defendant's matter for further proceedings. Specifically, the Supreme Court requested: (1) clarification as to how much time

Defendant spent at Level V on his unlawful sexual contact charge; and, (2) whether the VOP sentences imposed are consistent with double jeopardy principles by reflecting the appropriate credit time.

3. Defendant was held at the New Castle County Detention Center (“NCCDC”) from October 9, 1997 through August 18, 1998, in connection with his unlawful sexual contact second charge because he was a juvenile. On July 24, 1998, Judge Alford sentenced Defendant, effective May 7, 1998, to two years Level V suspended for two years at Level IV Plummer Center, suspended after serving one year for one year at Level IV home confinement.<sup>1</sup> Defendant spent a total of ten months and nine days at the NCCDC prior to being transferred to the Multi-Purpose Criminal Justice Facility (“Gander Hill”).<sup>2</sup>

4. Defendant was held for 205 days at Level V at Gander Hill pending space availability at Level IV Plummer Center.<sup>3</sup> Defendant was transferred to the Plummer Center on March 15, 1999 and remained classified at Level IV until March 23, 1999.<sup>4</sup>

5. Defendant was transferred back to Gander Hill on March 23, 1999 and was held at Level V as a detentioner until April 28, 1999.<sup>5</sup> He was sentenced for his first violation of

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<sup>1</sup>The sentence provided only reflects CrA# 98-01-0669. On August 18, 1999, Judge Toliver ordered that Defendant be transferred from the custody of the Division of Youth Rehabilitative Services, Department of Children, Youth and their Families to the custody of the Department of Correction pursuant to 11 Del. C. § 2103A and 11 Del. C. § 4204A. The ordered transfer was to occur within 10 days of the order.

<sup>2</sup>Nine months and fifteen days were served presentence and twenty-four days were served post-sentence.

<sup>3</sup>Defendant is entitled to credit for the time he was held at Level V awaiting space at Level IV (August 18, 1998 through March 15, 1999). *State v. Gamble*, 728 A.2d 1171, 1172 (Del. 1999).

<sup>4</sup>Defendant is not entitled to credit for the eight days he spent at the Plummer Center classified at Level IV. *State v. Johnson*, 1997 WL 70827 (Del. Supr.).

<sup>5</sup>Defendant was held as a detentioner for 36 days.

probation (“VOP”) on April 27, 1999 as follows: effective April 27, 1999, one year Level V including credit for any time previously served, suspended for one year Level IV home confinement, after serving sixty days, this sentence is suspended for the balance at Level III. Defendant was ordered to be held at Level III while awaiting space at Level IV. On April 28, 1999, Defendant was transferred from Gander Hill to the Plummer Center and classified at Level IV until April 30, 1999.<sup>6</sup>

6. On August 10, 1999, Defendant was sentenced for his second VOP in connection to the unlawful sexual contact charge. Effective August 10, 1999, he was sentenced to two years Level V, with credit for time served, suspended for two years at Level IV home confinement, suspended after one year for one year at Level III. Defendant was classified as an absconder from August 10, 1999 through August 11, 1999. He was returned to Gander Hill on August 11, 1999, and was subsequently charged with escape after conviction, assault second, resisting arrest, and assault third. Defendant remained a detentioner until his third VOP hearing on December 22, 1999.

7. On December 22, 1999, Defendant was sentenced for his third VOP in connection with his unlawful sexual contact charge as follows: effective August 11, 1999, two year Level V with credit for 108 days previously served, suspended after one year for one year at Level IV work release, suspended after six months for six months at Level III probation. Based upon a

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<sup>6</sup>Defendant was released to Level III supervision pursuant to a modification of his April 27, 1999 sentencing order. On April 30, 1999, Judge Alford ordered that the balance of Defendant’s Level IV time be served at Level III.

review of the sentencing transcript, it is unclear how the 108 days credit time was calculated.<sup>7</sup>

8. In response to the Supreme Court's first inquiry, according to his inmate records, Defendant served a total of 241 days at Level V at Gander Hill on his unlawful sexual contact charge. In addition, he served 10 months and 9 days at the NCCDC pretrial and post-sentence prior to being transferred to Gander Hill on August 18, 1998. On Defendant's initial sentence for his unlawful sexual contact charge, he was only given credit for 3 months and 11 days (by way of his effective date) back to May 7, 1998. Defendant should have been given credit for all of the time he was held in custody in default of bail at the NCCDC.<sup>8</sup> Accordingly, Defendant should be given credit for the 309 days that he was held at the NCCDC and for an additional 133 days served at Gander Hill that was not included in his VOP order dated December 22, 1999.

9. In response to the Supreme Court's second inquiry, the Court's sentence would violate double jeopardy principles because the Defendant's sentence did not reflect the appropriate credit time. The sentence imposed for VOP must relate to the sentence imposed for a specific prior conviction. In this case, Defendant's original sentence imposed a total of two years of Level V time, therefore, the Court did not err in reimposing the two year Level V sentence. However, the Court must give credit to Defendant for 241 days instead of 108 days based upon the time he was held at Gander Hill and 309 days he was held at NCCDC.

10. Defendant was subsequently sentenced to a total of three years six months and thirty days at Level V for the charges of resisting arrest, escape after conviction and criminal mischief.

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<sup>7</sup>It would appear that the 108 days was an attempt to give Defendant credit for time credited in his original sentence order. It should be noted that, on the final sentence, Defendant was effectively given credit for the four months and eleven days he was held at Level V as a detentioneer at Gander Hill by backdating the effective date to August 11, 1999.

<sup>8</sup>See DEL. CODE ANN. tit. 11 § 3901(b) (2001).

Since Defendant was sentenced on his third VOP prior to being sentenced on any of these offenses, the Level V time ordered for the VOP was served first and expired on April 4, 2000. As a result, he is not currently being held in custody as a result of the VOP sentence. To remedy the miscalculation of credit time on CrA# 98-01-0669, it is recommended that Defendant be given credit for 442 days on the Level V sentence he is currently serving.<sup>9</sup>

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The Honorable Richard S. Gebelein

Orig: Prothonotary  
cc: Supreme Court  
Adolph Conover - DCC  
Attorney General's Office  
Public Defender's Office

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<sup>9</sup>The 442 days (approximately 14 months and 22 days) reflects credit for 309 days at NCCDC and 133 days at Gander Hill that Defendant was not previously given credit towards his Level V time. This is consistent with Defendant's claim that he is entitled to fourteen months of credit time.