

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JONATHAN E. MCCLEMENTS,	§
	§
Defendant Below-	§ No. 514, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 9705020483
Plaintiff Below-	§
Appellee.	§

Submitted: December 26, 2007

Decided: April 10, 2008

Before **STEELE**, Chief Justice, **HOLLAND**, and **BERGER**, Justices.

**ORDER**

This tenth day of April 2008, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Jonathan McClements, filed this appeal from the Superior Court's order denying his motion for reduction of sentence. The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of McClements' opening brief that his appeal is without merit. The State does concede error, however, with respect to one aspect of McClements' sentence and requests that this matter be remanded to correct that error. We agree. Accordingly, we affirm the Superior Court's judgment in part and reverse it in part. This matter shall be

remanded to the Superior Court for further proceedings to correct McClements' sentence.

(2) The record reflects that McClements pled guilty on January 5, 1998 to seven sexual offenses. The Superior Court sentenced him on March 6, 1998 to a total period of fifteen years at Level V incarceration, to be suspended after serving ten years for decreasing levels of supervision. McClements was released from Level V custody in 2006. In January 2007, McClements was charged with violating a condition of his probation by having contact with a minor. He was found guilty of the VOP and was sentenced to a total period of seven years at Level V incarceration, to be suspended after serving four years for decreasing levels of supervision. McClements filed a motion for modification of sentence alleging, in essence, that the Superior Court lacked jurisdiction to sentence him for a VOP because he was on conditional release, a form of parole, at the time of the alleged violation. The Superior Court denied McClements' motion. This appeal ensued.

(3) The Court has considered carefully the parties' respective positions on appeal. We find no merit to McClements' contention that the Superior Court lacked jurisdiction to sentence him for violating probation. The Superior Court may revoke a defendant's probationary sentence at any

time.<sup>1</sup> Nonetheless, as the State concedes, it is manifest that the aggregate seven-year term imposed on McClements for violating probation exceeded the balance of time remaining on his original 1998 sentence, which was five years.<sup>2</sup> Accordingly, this matter must be remanded to the Superior Court so that it may resentence McClements on the violation of probation charge, imposing a sentence within legal limits.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED, in part, and REVERSED, in part. This matter is hereby REMANDED to the Superior Court for further proceedings consistent with this order. Jurisdiction is not retained.

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>1</sup> *Williams v. State*, 560 A.2d 1012, 1015 (Del. 1989) (holding that the Superior Court has broad discretion to revoke unexecuted probationary sentences).

<sup>2</sup> *See, e.g., Pavulak v. State*, 880 A.2d 1044, 1046 (Del. 2005).