

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTOINE JENKINS,	§
	§ No. 488, 2007
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0305001500
	§
Plaintiff Below-	§
Appellee.	§

Submitted: May 8, 2008
Decided: May 19, 2008

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

ORDER

This 19th day of May 2008, it appears to the Court that:

(1) The defendant-appellant, Antoine Jenkins, filed an appeal from the Superior Court’s August 17, 2007, order denying his motion for credit for Level V time served. On February 1, 2008, we remanded the matter to the Superior Court because it was unclear, based upon the record before us, whether Jenkins had received the Level V credit to which he was entitled.¹

(2) On March 10, 2008, the Superior Court held a hearing to determine Jenkins’ entitlement to Level V credit. The Director of Offender

¹ In imposing sentence, the Superior Court must credit the defendant with all Level V time previously served. *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999).

Records for the Department of Correction, Cathy Escherich, testified at the hearing. Her testimony revealed the following: On July 21, 2003, Jenkins was sentenced on convictions of Reckless Endangering in the First Degree and Carrying a Concealed Deadly Weapon. On the reckless endangering conviction, he received three years at Level V, to be suspended after sixty days for two years at Level IV home confinement, in turn to be suspended after six months for two years at Level III probation. On the weapon conviction, he received two years at Level V, to be suspended for two years at Level II, to run concurrent with his other probationary sentence.

(3) In October 2003, Jenkins was arrested on new charges of Possession With Intent to Deliver Heroin, Possession of Cocaine, and Maintaining a Vehicle for Keeping Controlled Substances. He also was charged with a violation of probation (“VOP”) in connection with his earlier reckless endangering and weapon sentences. In March 2004, he was sentenced on the reckless endangering VOP to two years at Level V and, on the weapon VOP, to two years at Level V, to be suspended after eighteen months for six months at Level III. The weapon sentence was modified in July 2005, to two years at Level V, to be suspended for decreasing levels of supervision. Jenkins remained in prison at Level V from October 29, 2003, until August 21, 2005, thereby completing his two-year VOP sentence for

reckless endangering. In November 2005, the weapon sentence again was modified to provided that the Level IV time could be spent at either work release or home confinement.

(4) Jenkins was arrested on new charges in March 2006. He again was charged with a VOP in connection with the reckless endangering and weapon sentences. At that point, according to the Superior Court's report following remand, Jenkins had one year remaining on his reckless endangering sentence and only six months remaining on his weapon sentence.² On April 18, 2006, however, the Superior Court erroneously imposed a two-year Level V sentence for the VOP's, six months longer than the total amount of Level V time remaining on Jenkins' two sentences. Jenkins served the two-year sentence, thus remaining in prison for six months longer than he should have. Because Jenkins had already been released from prison at the time the Superior Court issued its report following remand, it was unable to give him credit for the additional six months spent in prison. As a means of providing partial relief to Jenkins, however, the Superior Court, by order dated March 25, 2008, modified its April 18, 2006, sentencing order to suspend all costs and fines.

² Although it is not clear from the Superior Court's report, we assume Jenkins had only six months remaining on his weapon sentence because he was entitled to credit for time previously spent at Level V as well as at the Level IV VOP Center. *Anderson v. State*, Del. Supr., No. 449, 2006, Ridgely, J. (Dec. 5, 2006) (Because Level IV VOP Center is as restrictive as Level V, any time spent there should be credited as Level V time).

(5) On March 26, 2008, following receipt of the Superior Court's report, and because Jenkins' appeal was now moot, the Clerk issued a letter to the parties directing that a stipulation of dismissal be signed by both parties and forwarded to the Court. The attorney for the State sent a letter and stipulation of dismissal to Jenkins, but did not receive a response. On April 15, 2008, the Clerk issued a notice to Jenkins to show cause why the appeal should not be dismissed as moot. On May 1, 2008, Jenkins responded to the notice stating that it was unfair to dismiss the matter as moot and that he deserved to be compensated for the additional six months he spent in prison.

(6) We have carefully reviewed the record in this case, which reflects that, beginning in June 2006, Jenkins filed numerous motions in the Superior Court claiming, correctly, that he was entitled to additional Level V credit---all to no avail. While we understand Jenkins' frustration with this situation, as a jurisdictional matter we do not have the authority in this appeal to grant him the relief he seeks. Because Jenkins has completed his prison term, the instant appeal is now moot. To the extent that Jenkins believes that he is entitled to additional relief, he must pursue it outside the context of this proceeding.

NOW, THEREFORE, IT IS ORDERED that this appeal is
DISMISSED as moot.

BY THE COURT:

/s/ Randy J. Holland
Justice