

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SHAUN O'BRIEN,	§
	§
Defendant Below-	§ No. 698, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0712016547
Plaintiff Below-	§
Appellee.	§

Submitted: May 14, 2010

Decided: July 7, 2010

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

ORDER

This 7th day of July 2010, after careful consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Shaun O'Brien, filed this appeal from the Superior Court's order, dated November 9, 2009, which denied his motion for correction of an illegal sentence. The State concedes that O'Brien's sentence exceeds the maximum statutorily-authorized sentence and, thus, must be corrected. We agree. Accordingly, the judgment below shall be reversed and the matter remanded for entry of a corrected sentencing order.

(2) The record reflects that O'Brien was arrested in December 2007 and later pled guilty to count of second degree unlawful sexual contact.¹ At the time of his offense, second degree unlawful sexual contact was a class G felony for which the maximum sentence was two years at Level V incarceration.² The Superior Court sentenced O'Brien on July 11, 2008 to the maximum sentence of two years at Level V incarceration, to be followed by one year at Level III probation.

(3) In his motion for correction of an illegal sentence, O'Brien argued that his original sentence was illegal because the one-year period of transitional probation exceeded the statutory maximum period of six months.³ The State concedes O'Brien's point, and we agree. Having sentenced O'Brien to the statutory maximum sentence, the Superior Court was not authorized to impose more than a six-month period of transitional supervision following O'Brien's incarceration.⁴ Thus, the Superior Court's imposition of

¹ 11 Del. C. § 768 (2007).

² 11 Del. C. § 4205(b)(7) (2007). Section 768 was later amended, effective July 10, 2009, to reclassify second degree unlawful sexual contact as a Class F felony, thus increasing the maximum sentence to three years at Level V incarceration.

³ 11 Del. C. § 4204(l) (requiring the Superior Court, for any sentence exceeding one year imprisonment, to impose an additional period of transitional supervision of not less than six months).

⁴ *See Larson v. State*, 1995 WL 236650 (Del. Apr. 13, 1995) (holding that, when the Superior Court imposes the statutory maximum sentence upon a defendant, the follow-up period of transitional supervision under 11 Del. C. § 4204(l) may not exceed six months).

a one-year period of probation following O'Brien's two-year maximum sentence was illegal as a matter of law.

(4) Accordingly, the Superior Court erred in refusing to correct O'Brien's sentence to reduce his period of probation from one year to six months. Therefore, the judgment below shall be reversed and this matter shall be remanded for correction of O'Brien's sentence.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is REVERSED and REMANDED for further proceedings in accordance with this order.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice