

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LARRY A. MILLS,	§
	§
Defendant Below-	§ No. 224, 2010
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0908014070
Plaintiff Below-	§
Appellee.	§

Submitted: July 16, 2010
Decided: September 20, 2010

Before **HOLLAND, BERGER, and JACOBS**, Justices.

ORDER

This 20th day of September 2010, after careful consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Larry Mills, filed this appeal from the Superior Court's order, dated March 29, 2010, which denied his motion for modification of sentence. We find that the terms of the Superior Court's sentencing order exceeded the statutorily authorized sentence for Mills' conviction. Accordingly, the judgment below shall be reversed and the matter remanded for entry of a corrected sentencing order.

(2) The record reflects that a Superior Court judge found Mills guilty of shoplifting following a two-day bench trial. The Superior Court

sentenced Mills to the maximum sentence of one year at Level V imprisonment.¹ Pursuant to 11 Del. C. § 4204(1),² the Superior Court’s sentencing order included a six-month transitional period, following Mills’ incarceration, to be served for three months at Level IV work release followed by three months at Level III probation. The Superior Court ordered that Mills be held at Level V pending space availability at Level IV. Mills did not appeal. Instead, he filed a motion for modification of sentence, which the Superior Court denied. This appeal followed.

(3) In his opening brief on appeal, Mills argues that the “hold at Level V pending space availability” provision is illegal because it exceeded the statutorily-authorized one-year sentence for his conviction. In response, the State contends that, due to good time credits and the possibility that the Department of Correction may release Mills to Level IV any time during the last six months of his incarceration, Mills cannot prove that his sentence, in fact, will exceed the one-year maximum sentence. Thus, the State asserts that Mills’ argument is premature and not ripe for consideration. We disagree.

¹ Shoplifting is a class A misdemeanor. *See* Del. C. Ann. tit. 11, § 840 (2007). The authorized sentence for a class A misdemeanor may include up to one year incarceration at Level V and a fine up to \$2300. *See* Del. C. Ann. tit. 11, § 4206(a) (2007).

² *See* Del. C. Ann. tit. 11, § 4204(1) (2007) (requiring the Superior Court to impose an additional period of transitional supervision of not less than six months for any sentence of imprisonment of one year or more).

(4) On its face, the “hold at Level V” provision causes the overall sentence imposed by the Superior Court to exceed the one-year maximum sentence. Having sentenced Mills to the statutory maximum sentence, the Superior Court was not authorized to impose a “hold at Level V” provision as part of the six-month period of transitional supervision following Mills’ incarceration. Accordingly, we find that the Superior Court’s judgment must be reversed and this matter shall be remanded for correction of that portion of Mills’ 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/ Carolyn Berger
Justice