

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FRANCIS D. PUCCI,	§
	§ No. 681, 2010
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0811016532
Plaintiff Below-	§
Appellee.	§

Submitted: April 5, 2011
Decided: April 12, 2011

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

ORDER

This 12th day of April 2011, it appears to the Court that:

(1) The appellant, Francis Pucci, filed this appeal from the Superior Court's order sentencing him for a violation of probation (VOP). Pucci filed his opening brief on appeal on November 12, 2010. He raised four arguments: (i) his VOP sentence was illegal because it exceeded the time remaining to be served on his original sentence; (ii) his VOP sentence was excessive given the technical nature of his violation; (iii) his VOP sentence failed to credit him with time he previously served in custody while awaiting sentencing; and (iv) the VOP proceedings violated his due process rights

because he was not given an adequate opportunity to consult with his counsel.

(2) In response to Pucci's opening brief, the State moved to remand this matter to the Superior Court to determine whether Pucci's sentence should be modified. On remand, the Superior Court gave Pucci credit for time previously served by modifying the effective date of his VOP sentence but denied any other modification of his sentence. The matter was returned from remand, and Pucci filed a supplement to his opening brief alleging several grounds for error in the Superior Court's modified sentencing order. In response, the State filed a second motion to remand acknowledging that the modified sentencing order was erroneous because it exceeded the Level V time remaining to be served on Pucci's original sentence. The State further argued, however, that Pucci's complaint that his sentence was excessive could not be reviewed by this Court on appeal because Pucci had failed to provide the Court with transcripts of his VOP hearing. We denied the State's motion and ordered the Superior Court to prepare the transcripts at State expense.

(3) On April 5, 2011, the Court received a letter from the sentencing judge in this matter requesting that Pucci's case be remanded to the Superior Court for further proceedings. The trial judge acknowledges

that Pucci's latest VOP sentence was in excess of the maximum sentence that could be imposed upon him. The trial judge also concludes that Pucci's sentence is excessive in light of further information that Pucci offered to the Superior Court in a motion for modification of sentence that he filed in that court in March 2011.

(4) In light of the sentencing judge's letter, the Court has determined that Pucci's appeal should be remanded to the Superior Court to allow the trial court to resentence Pucci consistent with its April 5, 2011 letter. Because it appears that a remand to modify Pucci's sentence will address all of the issues that Pucci raises on appeal, this Court will not retain jurisdiction over this matter. To the extent that Pucci is dissatisfied with his modified sentence on remand, he will have the right to appeal from that modified sentencing order.

NOW, THEREFORE, IT IS ORDERED that this appeal is REMANDED to the Superior Court for further proceedings consistent with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Randy J. Holland
Justice