

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN C. AUSTIN,	§	
	§	No. 697, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	Cr. ID Nos. 0903023506
	§	0903023542
Plaintiff Below,	§	0904010801
Appellee.	§	

Submitted: April 8, 2011  
Decided: June 20, 2011

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

**O R D E R**

This 20<sup>th</sup> day of June 2011, upon consideration of the briefs on appeal and the Superior Court record, it appears to the Court that:

(1) On August 5, 2009, the appellant, John C. Austin, pled guilty to Carjacking in the First Degree, Criminal Mischief and four counts of Burglary in the Third Degree. Austin was sentenced to a total of twenty-four years at Level V suspended after eighteen months for decreasing levels of supervision.

(2) On September 22, 2010, while he was on conditional release, Austin was charged with violation of probation (VOP). On September 24, 2010, Austin was found guilty of VOP and was sentenced to twenty-two and

one-half years at Level V suspended upon successful completion of Level V Boot Camp for decreasing levels of supervision.

(3) On October 22, 2010, Austin filed a letter with the Superior Court claiming that the Superior Court could not sentence him for VOP while he was on conditional release. By order dated October 28, 2010, the Superior Court advised Austin that it had the authority to revoke his probation and impose sentence, and that Austin's claim to the contrary was without merit. This appeal followed.

(4) Conditional release is served by a defendant who achieves early release from prison for merit and good behavior credits.<sup>1</sup> Conditional release is considered a period of parole and is served prior to any probationary terms.<sup>2</sup>

(5) Title 11, section 4352 of the Delaware Code provides that an offender on conditional release is subject to return to the Board of Parole on a charge of violating the conditions of release.<sup>3</sup> Section 4352 does not divest the Superior Court of jurisdiction from proceeding on a VOP.<sup>4</sup> The Superior Court was correct when it ruled that it had the authority to revoke Austin's

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<sup>1</sup> Del. Code Ann. tit. 11, § 4302(5) (2007).

<sup>2</sup> Del. Code Ann. tit. 11, § 4348.

<sup>3</sup> Del. Code Ann. tit. 11, § 4352.

<sup>4</sup> *In re Cooper*, 2010 WL 4009201 (Del. Supr.).

unexecuted probation and impose sentence on September 24, 2010 even though Austin was on conditional release.<sup>5</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>5</sup> See Del. Code Ann. tit. 11, § 4333(a) (providing that probation may be terminated at any time).