

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALFRED FLAMER,	§	
	§	No. 707, 2010
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 1001012731
Appellee.	§	

Submitted: April 22, 2011

Decided: June 27, 2011

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

O R D E R

This 27th day of June 2011, upon consideration of the briefs of the parties and the Superior Court record, it appears to the Court that:

(1) On June 21, 2010, Flamer pled guilty to a drug offense and was sentenced, effective January 18, 2010, to two years at Level V incarceration suspended for one year of Level III probation (“the original sentence”). Thereafter, on September 21, 2010, the Superior Court adjudged Flamer guilty of violation of probation (VOP) and sentenced him, effective September 11, 2010, to two years at Level V suspended after one year with no probation to follow (“the VOP sentence”). By order dated November 19,

2010, the Superior Court modified the VOP sentence to credit Flamer with two days previously served (“the VOP sentence as amended”). This appeal followed.

(2) On appeal, Flamer argues that the original sentence did not credit him with five months that he spent incarcerated prior to the guilty plea proceedings. Flamer’s claim is not supported by the record. The original sentence was made “effective January 18, 2010,” which appears to account for Flamer’s pre-guilty plea incarceration.

(3) Next, Flamer argues that the VOP sentence is too harsh because it imposed Level V for a “minor violation.” Flamer’s claim is unavailing. “[O]nce a defendant violates the terms of [] probation, the Superior Court has the authority to require a defendant to serve the sentence imposed,” which in Flamer’s case included Level V.¹

(4) Nonetheless, as the State laudably concedes, it is manifest that this matter must be remanded for correction of the VOP sentence. When sentencing Flamer on the VOP, the Superior Court erred when imposing *two* years at Level V, because the two years that were imposed in the original

¹ *State v. Sloman*, 886 A.2d 1257, 1260 (Del. 2005) (citing Del. Code Ann. tit. 11, § 4334(c)).

sentence were suspended for only *one* year at Level III probation.² Thus, this matter must be remanded to the Superior Court for correction of the amended VOP sentence to impose no more than one year at Level V.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED in part and REVERSED in part. This matter is remanded to the Superior Court for further proceedings consistent with this Order. The mandate shall issue forthwith.

BY THE COURT:

/s/ Randy J. Holland

Justice

² See *Pavulak v. State*, 880 A.2d 1044, 1046 (Del. 2005) (providing that when sentencing on a VOP, the trial court is limited to imposing up to the balance of the suspended Level V sentence then in effect).