IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRYAN M. HURLEY,	§	
	§	No. 289, 2012
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	Cr. ID No. 1104003638
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: September 7, 2012
Decided: November 13, 2012

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

O R D E R

This 13th day of November 2012, upon consideration of the parties' briefs on appeal and the Superior Court record, it appears to the Court that:

(1) On August 1, 2011, the defendant-below, Bryan Hurley, pled guilty to one count of Possession of Heroin, a Class A misdemeanor.[1] On August 19, 2011, Hurley was sentenced to one year at Level V incarceration, the statutory maximum for a Class A misdemeanor, and two years at Level III probation.[2]

[1] DEL. CODE ANN. tit. 16, § 4763 (2003).

[2] DEL. CODE ANN. tit. 11, § 4206 (2007).

(2) On January 26, 2012, Hurley, through counsel, moved for correction of the sentence on the basis that the imposed probation was illegal. Counsel argued that, because Hurley had been sentenced to the maximum period of incarceration, the Superior Court could not legally impose probation over and above the six-month transitional period required by the Delaware Code.

(3) Under Title 11, Section 4204(l) of the Delaware Code, whenever the Superior Court imposes a period of incarceration at Level V custody for one year or more, it must include as part of the sentence a period of custodial supervision at Level IV, III or II "to facilitate the transition of the individual back into society."[3] Where, as in Hurley's case, the statutory maximum sentence is imposed, the duration of the transitional period under Section 4204(l) is clearly limited to six months.[4]

(4) By order dated March 7, 2012, the sentencing judge modified the sentence by reducing the probation imposed from two years to one year. The sentencing judge did not state in the modified sentencing order whether

[3] DEL. CODE ANN. tit. 11, § 4204(l).

[4] *Larson v. State*, 1995 WL 236650, at *2-3 (Del. Apr. 13, 1995).

the probation was imposed under Section 4204(l). Hurley did not file an appeal from the modified sentence.[5]

(5) On April 16, 2012, Hurley filed a *pro se* motion for correction of the modified sentence, claiming that the one year of probation was illegal, because the Superior Court could not impose probation exceeding the six-month transitional period required under Section 4204(l). By order dated April 26, 2012, the sentencing judge denied Hurley's motion on the basis that the court would not consider repetitive requests for relief.

(6) On May 29, 2012, Hurley appealed from the Superior Court's April 26, 2012 order denying his motion for correction of the modified sentence. The parties submitted that appeal for decision on the basis of the parties' briefs.

(7) In its answering brief, the State correctly observes that, before filing his notice of appeal in this matter, Hurley (and his Counsel) filed related requests for relief that the Superior Court denied. A request for relief filed by Hurley *pro* se on May 21, 2012, however, remains pending in the Superior Court (the "Pending Matter").[6]

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[5] The record suggests, however, that the March 7, 2012 Modified sentence was not docketed until March 22, 2012, and that the Superior Court may not have sent copies of the Modified sentence to the parties as required.

[6] The Pending Matter, *i.e.*, Hurley's letter request filed on May 21, 2012, was addressed to a judge other than the original sentencing judge. That judge to whom the letter was

(8) Under the circumstances, and in the interests of justice and judicial economy, this Court has determined that the case should be remanded to the Superior Court for further proceedings on an expedited basis. On remand, the Superior Court is directed to correct the modified sentence, to impose the six-month transitional period required under Section 4204(l), and to rule on the Pending Matter. The Superior Court shall take such action, no later than thirty days from the date of this Order.

NOW, THEREFORE, IT IS ORDERED that this matter is REMANDED to the Superior Court for further proceedings in accordance with this Order. Jurisdiction is not retained. The mandate shall issue forthwith.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

addressed requested that the State file a response to Hurley's letter. The State filed its response on August 2, 2012. As of October 26, 2012, the Superior Court has not ruled on the Pending Matter.