

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|--------------------|--------------------------------|
| KEVIN J. SUDLER, | § |
| | § |
| Defendant Below- | § No. 174, 2003 |
| Appellant, | § |
| | § |
| v. | § Court Below—Superior Court |
| | § of the State of Delaware, |
| STATE OF DELAWARE, | § in and for New Castle County |
| | § Cr.A. Nos. VN00-06-0042 |
| Plaintiff Below- | § VN00-06-0050 |
| Appellee. | § |

Submitted: July 11, 2003

Decided: October 1, 2003

Before **HOLLAND**, **STEELE** and **JACOBS**, Justices

ORDER

This 1st day of October 2003, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Kevin J. Sudler, filed an appeal from the Superior Court's March 10, 2003 order denying his motion for correction of sentence pursuant to Superior Court Criminal Rule 35(a). We find no merit to the appeal. Given the apparent confusion concerning Sudler's sentences, we REMAND this matter to the Superior Court.

(2) In August 2000, Sudler pleaded guilty to Forgery in the Second Degree and Misdemeanor Theft. He was sentenced to a total of 3 years incarceration at Level V, to be suspended after 90 days for probation. On August

15, 2001, Sudler was found to have committed a violation of probation (“VOP”). His probation was revoked and his Level V sentences for forgery and theft were reimposed. The sentencing order notes that, upon completion of the Level V portion of the sentences, the defendant will be “discharged as unimproved.” It appears that Sudler completed the Level V time remaining on his forgery and theft sentences.

(3) On July 9, 2002, Sudler was found to have committed another VOP in connection with his forgery and theft sentences as well as several other sentences with probationary terms. All of his probationary sentences were revoked and his Level V sentences were reimposed. In October 2002, the Superior Court issued a corrected sentencing order discharging Sudler from probation on two of his sentences other than those for forgery and theft.

(4) In this appeal, Sudler claims that the Superior Court erred by reimposing his Level V sentences for forgery and theft in its July 9, 2002 order because he had already served those Level V sentences and been discharged as unimproved per the Superior Court’s August 15, 2001 sentencing order. In its answering brief, the State of Delaware concedes that the Superior Court erred by reimposing the incarcerative portions of Sudler’s forgery and theft sentences.¹ The

¹DEL. CODE ANN. tit. 11, § 4333. The State further notes that the State was not afforded an opportunity by the Superior Court to respond to Sudler’s Rule 35(a) motion and that Sudler may not have been given credit for all the time he served at Level V.

State requests this Court to remand the matter to the Superior Court so that proper credit may be given to Sudler for the time he spent at Level V. In his reply brief, Sudler joins in the State's request.

(5) Given the apparent confusion concerning Sudler's sentences, we agree in the interest of justice that this matter should be remanded to the Superior Court. On remand, the Superior Court should conduct whatever proceedings it deems necessary, including an evidentiary hearing, to clarify the current status of Sudler's sentences and issue a sentencing order consistent with its findings.

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

BY THE COURT:

/s/ Myron T. Steele
Justice