

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARSHALL L. PERSON,	§	
	§	No. 284, 2003
Defendant Below-	§	
Appellant,	§	Court Below – Superior Court
	§	of the State of Delaware,
v.	§	in and for New Castle County
	§	Cr. A. No.VN01-12-0410-01
STATE OF DELAWARE,	§	
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: October 31, 2003
Decided: December 10, 2003

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

ORDER

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

(1) The defendant-appellant, Marshall L. Person, filed an appeal from the Superior Court’s May 12, 2003 order denying his motion for correction of sentence. Because Person was entitled to credit for time served at Level V awaiting placement in the first offender boot camp diversion program,¹ the judgment of the Superior Court must be reversed and the matter remanded to the

¹ DEL. CODE ANN. tit. 11, § 6712 (2001).

Superior Court for application of the credit time to Person's current Level V sentence.

(2) On November 21, 2001, Person was arrested and held at Level V on secured bail in connection with two drug charges. On January 23, 2002, Person pleaded guilty to Trafficking in Cocaine and was given a mandatory sentence of three years incarceration at Level V, to be followed by probation. Sentencing was deferred pending Person's successful completion of the boot camp program. It appears that Person was held at Level V until he entered the program on June 4, 2002 and that he graduated from the program on December 3, 2002. On December 27, 2002, however, Person committed a violation of probation ("VOP"). On January 14, 2003, his deferred three-year Level V sentence was imposed by the Superior Court.

(3) Person originally appealed the Superior Court's denial of his motion for correction of sentence in June 2003, arguing that he was entitled to credit for the time he spent at Level V waiting to enter boot camp as well as the time spent in the boot camp program. The State moved to affirm the judgment of the Superior Court on the ground that Person was not entitled to a credit for any time spent at Level V.² By Order dated August 20, 2003, this Court granted the motion as to the

² SUPR. CT. R. 25(a).

time spent by Person in the boot camp program,³ but denied the motion as to the time spent at Level V waiting to enter boot camp.⁴

(4) The State has now filed an answering brief, which takes the position that Person is entitled to credit for the time he spent at Level V waiting to enter boot camp and that the matter should be remanded to the Superior Court for application of the credit to the Level V VOP sentence that Person is now serving.⁵ Accordingly, this matter will be remanded to the Superior Court for the issuance of an amended sentencing order in VN01-12-0410-01 which credits Person with the appropriate amount of Level V time.

(5) Rule 3.8 of the Delaware Lawyers' Rules of Professional Conduct is titled "Special responsibilities of a prosecutor." The Commentary to that rule provides "[a] prosecutor has the responsibility of a minister of justice and not simply that of an advocate." The prosecutor in this appeal, John Williams, Esquire, is commended for discharging that important responsibility in accordance with the highest tradition of the Delaware Bar.

³ DEL. CODE ANN. tit. 11, § 6712(h).

⁴ *Zecca v. State*, Del. Supr., No. 140, 2002, Steele, J. (Aug. 9, 2002) (a defendant is entitled to credit for time spent at Level V waiting to enter the boot camp program).

⁵ VN01-12-0410-01. The State represents that it has reviewed the Department of Correction records regarding Person's sentences and that they reflect no credit for 6 months and 14 days Person spent at Level V waiting to enter the boot camp program.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is REVERSED and this matter is REMANDED to the Superior Court for further action in accordance with this Order.

BY THE COURT:

/s/ Randy J. Holland
Justice