

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRADFORD WILSON,	§
	§
Defendant Below-	§ No. 139, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN99-04-0310
Plaintiff Below-	§ VN96-08-0926-02
Appellee.	§ VN96-08-0927-02

Submitted: August 31, 2000

Decided: September 12, 2000

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices

**ORDER**

This 12<sup>th</sup> day of September 2000, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Bradford Wilson, filed this appeal from the March 15, 2000 order of the Superior Court denying his motion for credit for time previously served. We find no merit to the appeal. Accordingly, we AFFIRM. However, we *sua sponte* REMAND this matter to the Superior Court so that its January 14, 2000 sentencing order can be amended to include the Superior Court's oral ruling that Wilson is entitled to 12 days of credit for time previously spent at Level V incarceration.

(2) In this appeal, Wilson claims that his sentences for violations of probation (VOP's) should be amended to reflect credit for time he was incarcerated at Level V.<sup>1</sup> Wilson claims he is entitled to credit for 12 days of incarceration from March 31, 1999 to April 12, 1999.<sup>2</sup>

(3) On March 31, 1999, Wilson was arrested on charges relating to sexual contact with a minor child. He remained incarcerated at Level V until April 12, 1999, at which time he posted bail and was released. In November 1999, pursuant to a plea agreement, Wilson pleaded guilty to unlawful sexual contact in the second degree and harassment. On January 14, 2000, Wilson was sentenced to 2½ years incarceration at Level V, to be suspended after 6 months for 2 years of Level III supervision on the charge of unlawful sexual contact. The transcript of the sentencing hearing reflects that the Superior Court intended to give Wilson credit for 12 days served at Level V after being arrested on March 31, 1999, although the sentencing order does not include any such language. Wilson filed a direct appeal from his conviction for unlawful sexual contact, which is currently pending before this Court.

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<sup>1</sup>11 *Del. C.* § 3901(c).

<sup>2</sup>In his Superior Court motion for credit for time previously served, Wilson also requested credit for time served at Level V since November 3, 1999. In its February 4, 2000 order, the Superior Court gave Wilson credit for that time.

(4) At the time of Wilson's conviction for unlawful sexual contact, he was on probation in connection with previous convictions for criminal mischief and tampering with a witness. On February 4, 2000, subsequent to sentencing on the unlawful sexual contact charge and prior to the instant appeal, Wilson was found guilty of a violation of probation in connection with the criminal mischief charge and another violation of probation in connection with the tampering charge. He was sentenced to 3 months at Level V on each charge, with credit for time served on any VOP since November 3, 1999. In its March 15, 2000 order denying Wilson's motion for modification of sentence, the Superior Court noted that it had not intended to give Wilson credit for the 12 days he served from March 31, 1999 to April 12, 1999 in its February 4, 2000 sentencing orders.<sup>3</sup>

(5) The Superior Court was within its discretion to sentence Wilson as it did. As reflected in the transcript of the January 14, 2000 sentencing hearing, the Superior Court properly intended to give Wilson 12 days of credit for time previously served at Level V.<sup>4</sup> Likewise, in its subsequent sentencing orders, the Superior Court properly did not credit Wilson with the 12 days a second

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<sup>3</sup>This was presumably because the Superior Court intended to give Wilson credit for that time in its January 14, 2000 sentencing order.

<sup>4</sup>11 *Del. C.* § 3901(c).

time. However, we have concluded that, in order to insure that Wilson actually receives credit for the 12 days to which he is entitled, this matter must be remanded to the Superior Court so that its January 14, 2000 sentencing order can be amended to state explicitly that Wilson is entitled to credit for 12 days served at Level V between March 31, 1999 and April 12, 1999, in accordance with the Superior Court's intent.<sup>5</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED. However, this matter is hereby REMANDED to the Superior Court for modification of its January 14, 2000 order in accordance with this Order.

BY THE COURT:

s/Joseph T. Walsh  
Justice

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<sup>5</sup>We also note that, while the sentencing hearing transcript reflects an assessment of a \$200 fine against Wilson on the harassment charge, there is no such provision in the sentencing order.