

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES A. PERSON,	§
	§
Defendant Below-	§ No. 453, 2012
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID Nos. 1104001526,
	§ 1104002084, and 1101001874
Plaintiff Below-	§
Appellee.	§

Submitted: September 5, 2012

Decided: October 10, 2012

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

ORDER

This 10th day of October 2012, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The defendant-appellant, James Person, filed this appeal from the Superior Court's order, dated July 17, 2012, denying his motion for reconsideration of a prior order denying his motion for credit for time served. The State of Delaware has a filed a motion to affirm the judgment below on the ground that it is manifest on the face of Person's opening brief that his appeal is without merit. After review of the record, we find that Person is entitled to credit for all time he served in prison awaiting

resolution of his present VOP charges. Accordingly, we remand this matter to the Superior Court for further proceedings.

(2) The record reflects that Person pled guilty in the Court of Common Pleas on April 13, 2011 to one count of Shoplifting. The Court of Common Pleas sentenced him to one year at Level V incarceration to be suspended immediately for probation. The following day, Person pled guilty in the Superior Court to Robbery in the Second Degree and Tampering with Physical Evidence, which had been charged in two separate indictments.¹ The Superior Court sentenced him to total period of three years at Level V incarceration, with credit for twelve days served, to be suspended immediately for one year at Level IV Crest, followed by Crest Aftercare and probation.

(3) In February 2012, Person was arrested on a charge of violating the terms of his Court of Common Pleas (CCP) probation. As a result of that arrest, Person also was charged with violating the terms of his Superior Court probation. The cases were consolidated pursuant to 11 Del. C. § 4333(h). On March 16, 2012, the Superior Court held a hearing on the consolidated charges and found that Person had violated his probation. Person was sentenced to serve a total period of eight months at Level V

¹ The criminal case numbers associated with those charges are 1104001526 and 1104002084, respectively.

incarceration with no probation to follow. Person did not appeal the VOP adjudication or sentence.

(4) On May 21, 2012, Person filed a motion seeking credit for time he served in jail from February 13, 2012 to March 2, 2012 (the effective date of his VOP sentence). The Superior Court denied Person's motion for credit time on the ground that Person had been held during that time period on the charge of violating his CCP probationary sentence. Thus, he was not entitled to credit time against his Superior Court VOP sentence. Person filed a motion for reconsideration, which the Superior Court denied. This appeal followed.

(5) A defendant is entitled to Level V credit for all time served at Level V incarceration.² In this case, Person initially was incarcerated for a VOP associated with his CCP sentence. Once the CCP VOP charge was consolidated with the Superior Court VOP charge, the Superior Court should have credited Person with all time served at Level V awaiting disposition of the consolidated VOP charges. We reject the State's contention that the Superior Court must have intended Person's incarceration from February 13 to March 2 to be the sentence for Person's VOP associated with his CCP sentence. The Superior Court's sentencing order does not reflect such an

² DEL. CODE ANN. tit. 11, § 3901(b) (2007).

intention. In fact, the Superior Court's sentencing order does not reflect that Person was given credit toward any sentence for the time he spent at Level V awaiting the disposition of his consolidated VOP charges.³ Accordingly, this matter must be remanded to the Superior Court for the issuance of a new sentencing order that gives Person credit for the time he spent in jail from February 13 to March 2.

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

BY THE COURT:

/s/ Carolyn Berger
Justice

³ See *Oakley v. State*, 2008 WL 836598 (Del. Mar. 31, 2008).