

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JONATHAN G. DAHMS,	§	
	§	
Defendant Below-	§	No. 100, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. A. No. IN03-05-0467
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: July 30, 2004
Decided: August 17, 2004

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

ORDER

This 17th day of August 2004, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Jonathan G. Dahms, filed an appeal from the Superior Court's February 17, 2004 order denying his motion for sentence modification. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) By reindictment dated May 5, 2003, Dahms was charged with two counts of Attempted Robbery in the First Degree, Possession of a Firearm During the Commission of a Felony, Conspiracy in the Second Degree and Possession of Drug Paraphernalia, all of which allegedly took place on or about February 22, 2002. On June 10, 2003, Dahms pleaded guilty to a single count of Attempted

Robbery in the First Degree. He was sentenced on that date to 8 years incarceration at Level V, to be suspended after 3 years for 3 years at Level IV, to be suspended after 6 months for a total of 2 years at Levels III and II.¹

(3) In this appeal, Dahms claims that he should have received a probationary sentence of no more than two years under Del. Code Ann. tit. 11, § 4333(b) (1), whose effective date of May 31, 2003 was several days prior to his guilty plea and sentencing, and under Section 4333(j), which was added to the statute as of June 30, 2003, and which permits the limits on probation contained therein to be applied to sentences imposed prior to June 1, 2003 upon application by the Department of Correction and “for good cause shown.”

(4) Under the general savings statute of the Delaware criminal code, an amendment to a criminal statute does not invalidate or terminate any prosecution, regardless of the stage of the case, unless the amendment expressly so provides.² Here, because the amendments to which Dahms refers do not expressly provide for retroactive application of the limits on probation, except in certain cases where the Department of Correction chooses to apply for such retroactive application, the

¹ On May 24, 2004, after the instant appeal was filed, Dahms filed another motion for sentence modification in the Superior Court. By order dated June 30, 2004, the Superior Court modified Dahms’ sentence by substituting Level III time for the Level IV time contained in the original sentencing order. This modification has no impact on the instant appeal.

² Del. Code Ann. tit. 11, § 211(b) (2001).

general savings statute is applicable. Under the federal precedents,³ Dahms is not entitled to any benefit conferred by the amended statute because the effective dates of the amendments were subsequent to the date of the crime to which he pleaded guilty.⁴ There was, thus, no error or abuse of discretion on the part of the Superior Court in denying Dahms' motion for modification of sentence.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

³ Because the savings statute is modeled, in part, on a federal statute, federal case law may be used to interpret it. *State v. Ismaael*, Del. Super, Cr. ID No. 0304002130, Stokes, J. (Jan. 13, 2004), aff'd. Del. Supr., No. 17, 2004, Steele, C.J. (June 25, 2004).

⁴ *Warden, Lewisburg Penitentiary v. Marrero*, 417 U.S. 653, 661 (1974). The record reflects that the crime was committed on February 22, 2002; however, the amendments to the statute relied upon by Dahms did not become effective until May and June, 2003.