

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LARRY WHYE,	§	
	§	
Defendant Below-	§	No. 122, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. ID No. 0102019156
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: July 30, 2004  
Decided: October 4, 2004

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

**ORDER**

This 4<sup>th</sup> day of October 2004, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Larry Whye, filed an appeal from the Superior Court's March 1, 2004 order denying his motion for sentence reduction/modification. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In July 2001, Whye pleaded guilty to Trafficking in Cocaine. Sentencing was deferred while Whye was permitted to enter the First Offender

Boot Camp Diversion Program.<sup>1</sup> In September 2002, Whye was found to have committed a violation of probation (“VOP”). His probation was revoked and he was sentenced to 4 years incarceration at Level V, to be suspended after 3 years for 1 year Level IV work release, in turn to be suspended after 6 months for 6 months at Level III supervision.

(3) Whye subsequently moved for correction of an illegal sentence arguing that he should be given credit for 166 days he served at Level V prior to entering the boot camp program. The Superior Court initially denied the motion, but later modified Whye’s sentence to credit him with 166 days spent at Level V.

(4) In this appeal, Whye claims that the Superior Court committed legal error by not ordering that 6 months be removed from his 1-year probationary sentence. He argues that, under Del. Code Ann., tit. 11, § 4204(1), the Superior Court was permitted to impose only 6 months of probation.

(5) Whye misinterprets the statutory language. Under Section 4202(1), the Superior Court is required to impose at least 6 months probation following a period of more than 1 year of Level V incarceration. If the maximum sentence permitted by statute is imposed, the Superior Court may impose no more than the minimum 6-month probationary period; however, if less than the maximum is

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<sup>1</sup> Del. Code Ann., tit. 11, § 6705.

imposed, the Superior Court is not limited to imposing a 6-month probationary period.<sup>2</sup>

(6) In this case, the Superior Court was authorized to impose a sentence of up to 20 years incarceration at Level V for Trafficking in Cocaine.<sup>3</sup> If a 20-year Level V sentence had been imposed, the Superior Court would have been authorized to impose no more than a 6-month period of probation. Because only a 4-year sentence was imposed, however, the Superior Court did not err by sentencing Whye to a total of 1 year of probation.

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

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>2</sup> *Larson v. State*, Del. Supr., No. 366, 1994, Walsh, J. (Apr. 13, 1995).

<sup>3</sup> Del. Code Ann., tit. 16, § 4753A; Del. Code Ann., tit. 11, § 4205(b) (2).