

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEENEN WHITE,	§	
	§	
Defendant Below-	§	No. 190, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. ID No. 0003021309
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: July 30, 2004
Decided: October 8, 2004

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

ORDER

This 8th 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, Keenen White, filed an appeal from the Superior Court's April 8, 2004 order denying his third motion for reduction/modification of sentence. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In July 2000, White pleaded guilty to Trafficking in Cocaine. As a result of this conviction, White also was found to have committed a violation of probation ("VOP") with respect to each of four prior drug-related felony convictions. On the trafficking conviction, he was sentenced to a total of 5 years

incarceration at Level V, to be suspended after successful completion of boot camp and aftercare, with the balance of the sentence to be served at Level III probation. He was also sentenced to a total of 2 years at Level V on the VOPs, to be suspended for Level III probation. White entered the boot camp program in December 2000, but was discharged in January 2001 because of a medical condition. After a period of recovery, which was spent at Level V, White re-entered the boot camp program in August 2001.

(3) In June 2003, White pleaded guilty to one count of Distribution of a Controlled Substance Within 300 Feet of a Church and was sentenced to 2 years incarceration at Level V, to be suspended for decreasing levels of probation. As a result of this new conviction, White also was found to have committed a VOP with respect to each of his five previous drug-related felony convictions, including the July 2000 conviction of Trafficking in Cocaine. On that conviction, a mandatory sentence of 3 years incarceration at Level V was imposed. White also was discharged as unimproved from his remaining probationary sentences. The sentencing worksheet reflects that the Superior Court gave White credit for the Level V “time held for boot camp.” The sentencing order reflects that the Superior Court gave White “credit for time served.” White did not file a direct appeal from these convictions and sentences.

(4) In this appeal, White claims that the Superior Court abused its discretion by denying his motion for sentence reduction/modification. He argues that the Superior Court improperly failed to give him credit for the time he spent at Level V while recovering from his medical condition.

(5) It is White's burden to present evidence of an improper accounting of his Level V time by the Superior Court.¹ While White claims that he did not receive credit for the time he spent at Level V while recovering from his medical condition, he provides no specific evidence supporting that claim. The Superior Court's June 11, 2003 sentencing order reflects that White was to receive "credit for time served," which includes any time served at full Level V incarceration.² We are unable to conclude, based upon White's arguments and our careful review of the record, that White was not credited with all the Level V time to which he was entitled. We, thus, find no error or abuse of discretion on the part of the Superior Court.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹ *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).

² *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999).