

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DENNIS N. CARLSON,

Defendant Below-
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below-
Appellee.

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§ No. 76, 2004

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§ Court Below—Superior Court

§ of the State of Delaware,

§ in and for New Castle County

§ Cr.ID 0112018247

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Submitted: November 5, 2004

Decided: December 13, 2004

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

ORDER

This 13th day of December 2004, upon consideration of the Superior Court's report and recommendations following remand and the parties' respective responses thereto, it appears to the Court that:

(1) This is Dennis Carlson's direct appeal from his criminal sentencing on multiple counts of securities law violations. Carlson was represented at trial by privately-retained counsel. Prior to sentencing, the Superior Court granted defense counsel's motion to withdraw on the ground of irreconcilable differences. The public defender informed the Superior Court that Carlson did not meet the financial eligibility requirements. Carlson, therefore, proceeded to sentencing without legal counsel.

(2) After filing his notice of appeal pro se, Carlson filed a motion for the appointment of counsel. On July 27, 2004, we remanded the matter to the Superior Court for a fact-finding hearing on Carlson's financial ability to retain legal counsel. The Superior Court filed its report on remand on October 21, 2004. In its report, the Superior Court concluded that Carlson is indigent, and therefore entitled to legal counsel at State expense on direct appeal. Moreover, the Superior Court recognized that Carlson was, in fact, indigent at the time of his sentencing and was entitled to the assistance of court-appointed counsel at that time. The Superior Court therefore recommended that the matter be remanded for resentencing.

(3) Both Carlson and the State have responded to the Superior Court's report. The State laudably concedes plain error in the sentencing of Carlson, an indigent defendant, without the benefit of court-appointed counsel. Under the unique circumstances of this case, we find it necessary to vacate the Superior Court's January 30, 2004 sentencing order and to remand this matter for a new sentencing hearing after counsel is appointed to represent Carlson.

NOW, THEREFORE, IT IS ORDERED that the Superior Court's judgment is VACATED. This matter is hereby REMANDED for a new sentencing hearing in accordance with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Jack B. Jacobs
Justice