

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TODD V. CARIO,	§
	§
Defendant Below-	§ No. 380, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. IN99-01-0177W
Plaintiff Below-	§
Appellee.	§

Submitted: March 26, 2002

Decided: April 2, 2002

Before **VEASEY**, Chief Justice, **WALSH**, **HOLLAND**, **BERGER**, and **STEELE**, Justices (constituting the Court *en Banc*).

**ORDER**

This second day of April 2002, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Todd V. Cario, filed this appeal from the July 26, 2001 order of the Superior Court denying his second motion for modification of sentence. We affirm in part and reverse in part and remand this matter to the Superior Court for further proceedings in accordance with this Order.

(2) In this appeal, Cario claims that the Superior Court abused its discretion by denying his motion for a modification of the conditions of his sentence and by using a pre-printed form to render its decision. Cario contends that the sentencing order is ambiguous because it requires him to complete an outpatient drug/alcohol program, among other things,<sup>1</sup> while failing to impose any period of probation.

(3) In November 1999, Cario pleaded guilty to Escape in the Second Degree as a lesser-included offense of Escape After Conviction. He was sentenced as an habitual offender to four years imprisonment at Level V.<sup>2</sup> In February 2000, Cario filed a motion to modify his sentence, which, in March of 2000, was denied by the Superior Court. In June 2001, Cario filed a second motion to modify his sentence, which the Superior Court denied in July 2001.

(4) In its July 26, 2001 order, the Superior Court gave two reasons for its denial of Cario's motion—first, that it was time-barred because it was filed more than ninety days following the imposition of

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<sup>1</sup>The sentencing order also imposes the following additional conditions: substance abuse evaluation, payment of all monetary assessments, mental health evaluation, participation in a prescribed treatment program, treatment for hepatitis, payment of the cost of extradition, completion of the residential drug/alcohol program, and submission to random drug testing.

<sup>2</sup> Del. Code Ann. tit. 11, § 4214(a) (2001).

sentence<sup>3</sup> and, second, that it provided no additional information warranting a modification of the sentence. While the Superior Court was correct that the motion was filed more than ninety days following the imposition of sentence, we conclude that the sentencing order requires modification and remand this matter to the Superior Court for that purpose. While the sentencing order imposes a sentence of four years incarceration at Level V, it fails to impose the statutorily-required, six-month period of probation.<sup>4</sup> The Superior Court should modify its sentencing order to add the mandatory probationary period as well as any clarification of the conditions of sentence necessitated by that addition.

(5) In light of our holding, we do not reach Cario's claim that the Superior Court should not have used a pre-printed form to render its decision.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is affirmed in part and reversed in part. This matter is remanded to the Superior Court for further proceedings in accordance with this Order. Jurisdiction is not retained.

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<sup>3</sup> Super. Ct. Crim. R. 35(b).

<sup>4</sup> Del. Code Ann. tit. 11, § 4204(l) (2001); *Nave v. State*, 783 A.2d 120, 122 (Del. 2001).

BY THE COURT:

/s/ Randy J. Holland  
Justice