

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JERMAINE MOYE,	§
	§ No. 194, 2006
Defendant Below,	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0410023765
Plaintiff Below,	§
Appellee.	§

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

Submitted: May 12, 2006

Decided: May 17, 2006

ORDER

This 17th day of May 2006, upon consideration of the State's uncontested motion to remand, it appears to the Court that:

(1) The defendant-appellant, Jermaine Moye, through his counsel, filed the present appeal on April 17, 2006 following his criminal sentencing in March. Moye had been charged specifically with third degree rape, pursuant to 11 Del. C. § 771(a)(1), by intentionally engaging in sexual intercourse with a person under the age of 16 when the defendant is at least 10 years older than the victim. He was convicted of three counts of third degree rape.

(2) The State has filed a motion to remand this matter. The State concedes that Moye's convictions for third degree rape must be vacated because

the State failed to offer any proof at trial regarding Moye's age at the time of the offenses. Nonetheless, the State asserts that the evidence at trial was sufficient to prove the elements of three counts of fourth degree rape, in violation of 11 Del. C. §771(a)(1), beyond a reasonable doubt. The State, therefore, requests that the matter be remanded to the Superior Court with instructions to modify the judgment of conviction by reducing Moye's conviction on each count from third degree rape to fourth degree rape and resentencing him on the lesser offenses. Moye, through his counsel, consents to the requested remand.

NOW, THEREFORE, IT IS HEREBY ORDERED that the within appeal is hereby REMANDED to the Superior Court with instructions to modify the judgment of conviction in accordance with this Order and to resentence Moye on the modified judgment. Jurisdiction is not retained.

BY THE COURT:

/s/ Carolyn Berger
Justice