

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRYANT F. JACKSON,	§
	§ No. 351, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID Nos. 85007363DI
	§ 86000928DI
Plaintiff Below-	§
Appellee.	§

Submitted: August 25, 2006
Decided: October 10, 2006

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

ORDER

This 10th day of October 2006, upon consideration of the Superior Court's report following remand, the appellant's supplemental memorandum and the appellee's response, it appears to the Court that:

(1) The defendant, Bryant F. Jackson, filed an appeal from the Superior Court's July 25, 2005 order denying his motion for sentence modification. Following briefing, this Court remanded the matter to the Superior Court so that it could supply its reasons for denying Jackson's

motion.¹ After the Superior Court issued its report following remand, the parties submitted supplemental memoranda.

(2) The record reflects the following: In December 1985, Jackson pleaded guilty to Burglary in the Second Degree. He was sentenced to 5 years of Level V incarceration, to be suspended after 2 years for probation. In July 1986, Jackson pleaded guilty to Assault in the First Degree and Robbery in the Second Degree as a lesser-included offense of Robbery in the First Degree. On the assault conviction, he was sentenced to 30 years of Level V incarceration, to be suspended after 15 years for probation. On the robbery conviction, he was sentenced to 10 years of Level V incarceration.

(3) In 1998, Jackson was released from prison on parole. At that point, he had served approximately 13 of the 27 years remaining on his Level V sentences. In August 1999, Jackson was convicted of additional crimes, including Assault in the First Degree. In its August 4, 1999 sentencing order, the Superior Court, apparently assuming that Jackson's earlier sentence for Robbery in the Second Degree included a probationary period, "discharged" Jackson from that probationary period.

(4) In October 2003, the Board of Parole issued a warrant for Jackson's arrest for a parole violation stemming from his August 1999

¹ *Jackson v. State*, Del. Supr., No. 351, 2005, Jacobs, J. (Mar. 27, 2006).

convictions. Jackson was apprehended in November 2004. Following a hearing in January 2005, Jackson's parole was revoked and he was ordered to serve the remainder of his 1985-1986 Level V sentences. Jackson then filed a motion requesting the Superior Court to modify his sentences. He argued that the Board of Parole had no authority to re-impose his Level V sentences for a parole violation because the Superior Court had preempted the jurisdiction of the Board of Parole when it deemed him to be on probation rather than parole, as reflected in its August 4, 1999 sentencing order. On July 25, 2005, the Superior Court denied Jackson's motion, but failed to provide the reasoning underlying its decision. Jackson appealed and we remanded the matter to the Superior Court so that the reasoning underlying its decision could be supplied. On May 24, 2006, the Superior Court issued its report following remand.

(5) We agree with the Superior Court that this case is controlled by *Hall v. Carr*.² There, the defendant was sentenced to a term of Level V incarceration, to be followed by a period of probation. He was later released on parole, but when he reported to the Office of Probation and Parole, his parole term was erroneously "deferred" by the Department of Correction ("DOC") until the completion of his probationary sentence. Ultimately, the

² 692 A.2d 888 (Del. 1997).

defendant was convicted of new offenses, which resulted in the revocation of his parole and the reinstatement of his Level V sentence. The defendant claimed that the Board of Parole had no statutory authority to revoke his parole based on his commission of new crimes before the start of his parole term. This claim was based on the assumption that the defendant was on probation, not parole, when he committed the new crimes. This Court disagreed. It ruled that because the DOC lacked the authority to alter the defendant's sentence from parole to probation upon his release, the defendant was on parole at the time he committed the new crimes. Therefore, the Board of Parole retained jurisdiction to revoke the defendant's parole and re-impose the remainder of his Level V sentence.

(6) In the instant case, the Superior Court erroneously assumed that Jackson's sentence for Robbery in the Second Degree included a probationary period and, on that basis, "discharged" him from that probation. As in *Hall v. Carr*,³ the Superior Court's action was based upon an error of fact and, therefore, had no legal effect. Because Jackson remained on parole at the time he was charged with new offenses, the Board of Parole retained jurisdiction to revoke his parole and re-impose his Level

³ *Id.*

V sentences.⁴ Accordingly, the Superior Court did not err in denying the defendant's motion for sentence modification.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁴ Del. Code Ann. tit. 11, § 4347(i) ("Except when discharged . . . a person on parole or conditional release shall be on parole until the expiration of the maximum term for which the person is sentenced.")