

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BENJAMIN BLAND,	§	
	§	No. 221, 2006
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	Cr. I.D. Nos. 0505016150
	§	0505014649
Plaintiff Below,	§	
Appellee.	§	

Submitted: September 20, 2006

Decided: October 17, 2006

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

**ORDER**

This 17<sup>th</sup> day of October 2006, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Benjamin Bland, defendant-below, appeals from a written sentencing order by the Superior Court, contending that the sentencing order should conform to the sentencing judge's April 7, 2006 oral pronouncement. Because the written sentencing order imposes a two-year minimum mandatory incarceration, and not the one-year minimum mandatory sentence as stated in the sentencing transcript and the relevant statute, we vacate the written sentencing order and remand this case to the Superior Court to correct the sentencing order consistent with the April 7, 2006 oral sentence.

2. Following a jury trial in the Superior Court in January 2006, Benjamin Bland was convicted of burglary second degree, terroristic threatening, offensive touching, criminal contempt, and two counts of criminal mischief. Sentencing took place on April 7, 2006. With respect to the burglary second degree offense, Bland was sentenced to five years in prison, suspended after 18 months, followed by three years at decreasing levels of supervision. The sentencing transcript reflects the judge stating, “First year of this will be mandatory.” In contrast, the written sentencing order imposes a two-year minimum mandatory term of incarceration for the burglary conviction.<sup>1</sup>

3. In May 2006, Bland filed a *pro se* motion for a sentence modification that the Superior Court denied. Bland’s attorney then filed this appeal, and the State’s answering brief concedes the appellant’s argument.

4. Federal courts have consistently held that when there is a direct conflict between an unambiguous oral pronouncement of a sentence and the written judgment, the oral pronouncement controls.<sup>2</sup>

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<sup>1</sup> The minimum mandatory sentence for a person convicted of burglary in the second degree is one year at Level V. DEL. CODE ANN. tit. 11, § 825(b)(1) (2004).

<sup>2</sup> It is a “firmly established and settled principle of federal criminal law that an orally pronounced sentence controls over a judgment and commitment order when the two conflict.” *United States v. Chasmer*, 952 F.2d 50, 52 (3d Cir. 1991) (quoting *United States v. Villano*, 816 F.2d 1448, 1450 (10th Cir. 1987)). See also *United States v. Munoz-Dela Rosa*, 495 F.2d 253 (9th Cir. 1974) and *United States v. Morse*, 344 F.2d 27 (4th Cir. 1965) (holding that because oral pronouncement of sentence was unambiguous it controlled over written sentence).

5. Although Delaware has not expressly adopted the federal rule, Delaware statutory and case law authorize sentence correction for errors resulting from “oversight or omission.”<sup>3</sup> The Superior Court has amended sentencing orders to accurately reflect the intended sentence.<sup>4</sup> The sentencing judge clearly intended to sentence Bland to one year minimum mandatory imprisonment for his burglary charge and the State concedes the need for the correction.

NOW, THEREFORE, IT IS ORDERED that the written sentencing order is **VACATED** and the matter is **REMANDED** to the Superior Court for amendment consistent with the April 7, 2006 sentence.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>3</sup> See *Guyer v. State*, 453 A.2d 462, 464 (Del. 1982) and SUPER. CT. CRIM. R. 36, “Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the Court at any time and after such notice, if any, as the Court orders.”

<sup>4</sup> See *Elliott v. State*, 2003 WL 23538038 at \*1 (Del. June 3, 2003) (Superior Court corrected sentencing order to include the Key Program as a condition imposed by the original sentence) and *Guyer v. State*, 453 A.2d 462 (trial court amended sentence after determining that the “single theft rule” merged the charges and affected sentencing).