

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICHARD ANDERSON,	§	
	§	No. 449, 2006
Defendant Below,	§	
Appellant,	§	Court Below--Superior Court
	§	of the State of Delaware, in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Def. ID No. 30102683DI
Appellee.	§	9705008476

Submitted: December 1, 2006
Decided: December 5, 2006

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

ORDER

This 5th day of December 2006, upon consideration of the parties' briefs on appeal and the Superior Court record, it appears to the Court that:

(1) The appellant, Richard Anderson, filed an appeal from the Superior Court's July 24, 2006 denial of his motion for credit for time served. On appeal, Anderson argues that he should receive Level V credit for the period of time that he spent at a Level IV Violation of Probation Center (VOP Center) while awaiting placement at Level IV work release or home confinement.

(2) Anderson was convicted of violation of probation (VOP) in 2005 and was sentenced to four years and four months at Level V incarceration, suspended after four months for six months at Level IV home confinement or work release, followed by decreasing levels of supervision.¹ The Superior Court directed that Anderson should be held at Level V until an opening became available at Level IV home confinement or work release.

(3) After serving four months of incarceration, Anderson was eligible for placement in work release or home confinement; however, openings were not available in either program. At that juncture the Department of Correction elected to transfer Anderson to a Level IV VOP Center where, according to Anderson, he spent the next six months, *i.e.*, the duration of the Level IV portion of his sentence, until he was released on probation.

(4) By March 2006, Anderson had again been charged and convicted of VOP in this case. The Superior Court sentenced Anderson to four years at Level V suspended after one year for three years at Level III supervision.

(5) In April 2006, Anderson filed a motion for credit for time served. Anderson contended that he should receive Level V credit on his March 2006 VOP sentence for the period of time that he spent at the Level IV VOP Center pursuant

¹This was Anderson's second conviction of VOP in this case.

to his prior VOP sentence. The Superior Court denied Anderson's motion, concluding that the sentence imposed in March 2006 was appropriate. The Superior Court did not, however, address whether Anderson was entitled to Level V credit for the period of time that he spent at the Level IV VOP Center.

(6) It is clear that an inmate is entitled to Level V credit for all time served at Level V incarceration.² In this appeal, Anderson argues that he should receive Level V credit for the time he spent at a Level IV VOP Center because that facility, while classified as Level IV, is as restrictive as Level V incarceration.

(7) The State agrees with Anderson, noting that it has conceded as much in prior cases.³ The State's view is that inmates should receive Level V credit for time served at a VOP Center because the conditions of confinement are substantially more restrictive than those found in the other Level IV options.⁴

²*Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999).

³*See, e.g., Brown v. State*, 793 A.2d 306, 308-09 (Del. 2002) (reversing and remanding Superior Court judgment for credit of Level V incarceration). The Court takes judicial notice of Superior Court docket entry #56 dated April 24, 2002, which reflects that the State, post-remand, concurred with the defendant's contention that he was entitled to Level V credit for the time he was at the VOP Center.

⁴*Cf. Del Code Ann. tit. 21, § 4205A(b)* (2005) (requiring that term of imprisonment imposed for driving under the influence shall be served at Level V or at a comparable Level IV facility); *Walt v. State*, 727 A.2d 836, 838-40 (Del. 1999) (holding that three-month sentence to Level IV halfway house involved sufficient indicia of imprisonment so as to satisfy jurisdictional requirement of "imprisonment exceeding one month" for purposes of direct appeal).

(8) In this case, Anderson was ordered on a VOP to be held at Level V incarceration pending an opening in Level IV work release or home confinement. When an opening in work release or home confinement did not materialize, the Department of Correction transferred Anderson to a Level IV VOP Center. The State agrees that, under these circumstances, the restrictive conditions of Anderson's confinement at the VOP Center entitle him to Level V credit. The Court will remand the appeal to the Superior Court for the issuance of a sentencing order that gives Anderson Level V credit for the time that he spent at the Level IV VOP Center.⁵

NOW, THEREFORE, IT IS ORDERED that this matter is REMANDED to the Superior Court for the issuance of an appropriate order in accordance with this decision. The mandate shall issue immediately.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

⁵*But cf. Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999) (citing *Johnson v. State*, 1997 WL 70827 (Del. Supr.)) (holding that a defendant is not entitled to Level V credit for time served at Level IV work release).