

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE	§	No. 405, 2002
	§	
Plaintiff Below,	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware
v.	§	in and for New Castle County
	§	Cr.A. No. IN02-02-0759
JAMES E. LENNON	§	
	§	
Defendant Below,	§	
Appellee.	§	

Submitted: December 12, 2002
Decided: March 11, 2003

Before **VEASEY**, Chief Justice, **WALSH** and **BERGER**, Justices.

ORDER

This 11th day of March 2003, upon consideration of the briefs of the parties and oral argument, it appears to the Court that:

(1) On December 18, 2001, James E. Lennon entered a Wawa convenience store, displayed what appeared to be a handgun, and robbed the clerk. Two days later, Lennon robbed another Wawa convenience store in a similar manner. On April 8, 2002, Lennon accepted a plea agreement under which he pled guilty to one count of first degree robbery and one count of second degree robbery.

(2) On June 21, 2002, the trial court sentenced Lennon, on the charge of first degree robbery, in pertinent part: “effective January 30, 2002, you’re placed in the custody of the Department of Correction for a period of five years. That’s suspended upon successful completion of Key, for the balance at Level 3, Crest After-Care.” “Key” refers to the Key Therapeutic Community, a six to eighteen month drug treatment program established by the Delaware Department of Correction. “Crest After-Care” refers to a related, though less restrictive, program. The State timely objected to the imposed sentence.

(3) This Court reviews sentences to determine, *inter alia*, whether they fall “within the statutory limits.”¹ First degree robbery is a Class B felony.² As such, under 11 *Del.C.* §4205(b)(2), the minimum sentence is “not less than 2 years ... to be served at Level V.” Pursuant to 11 *Del. C.* §4205(d), the minimum sentence required by subsection (b) is not subject to suspension by the court.

(4) The trial court’s sentencing order does not require Lennon to serve 2 years at Level V. It only requires him to complete the Key program (which could take as little as 6 months) before being released from Level V. Even

¹ *Siple v. State*, 701 A.2d 79, 83 (Del. 1997); *see also Ward v. State*, 567 A.2d 1296, 1297 (Del. 1989) (“Appellate review of a sentence generally ends upon determination that the sentence is within the statutory limits prescribed by the legislature”).

² 11 *Del.C.* §832(a).

though the order is retroactive, the retroactive effective date only adds approximately 5 months to Lennon's Level V time. Thus, under the existing order, Lennon could be released from Level V after only 11 months. This clearly violates the two-year minimum at Level V set out in 11 *Del.C.* §4205(b).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is REVERSED, and this case is REMANDED for resentencing consistent with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Carolyn Berger
Justice