

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARCUS JOHNSON,	§
	§ No. 426, 2006
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. 0204002388
	§ 0403012959
Plaintiff Below-	§
Appellee.	§

Submitted: April 11, 2007

Decided: April 26, 2007

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 26th day of April 2007, the Court has before it the motion for reargument of the defendant-appellant, Marcus Johnson, and the motion for reargument of the plaintiff-appellee, the State of Delaware. The Court has concluded that both motions should be granted. Accordingly, the Court's prior Order in this matter, *Johnson v. State*, Del. Supr., No. 426, 2007, Holland, J. (Mar. 28, 2007), is hereby rescinded. The following constitutes the final disposition of the Court in this matter.

(1) Johnson filed an appeal from the Superior Court's July 14, 2006 order denying his motion for postconviction relief. We find no merit to the appeal. Accordingly, we affirm.

(2) In August 2002, Johnson pleaded guilty to Trafficking in Cocaine. He was sentenced to four and a half years of Level V incarceration, to be suspended after three years for one and a half years of decreasing levels of probation. Johnson's sentence was deferred pending successful completion of the Boot Camp Diversion Program,¹ at which time the balance of Johnson's sentence would be suspended for one and a half years of probation.

(3) Johnson successfully completed the boot camp portion of his sentence and was released on probation. While on probation, however, Johnson was arrested on several criminal charges, including Trafficking in Cocaine and Possession With Intent to Distribute Cocaine. In September 2004, Johnson was found to have committed a violation of probation ("VOP") with respect to his 2002 sentence. The Superior Court re-imposed his original sentence---four and a half years at Level V, to be suspended after three years for one and a half years at Level III. Johnson subsequently filed two motions for sentence modification, claiming that he was entitled to credit for the time he had spent in the boot camp program. The Superior Court denied both motions.

¹ Del. Code Ann. tit. 11, § 6705 and 6712.

(4) In this appeal from the Superior Court's denial of his postconviction motion, Johnson claims that a) the Superior Court improperly failed to give him credit for the time he spent at boot camp when it re-imposed his original sentence; and b) his counsel provided ineffective assistance by failing to file motions addressing the boot camp issue.

(5) Upon a finding that a boot camp graduate has violated his probation, "the court shall proceed to sentencing on all charges for which sentencing was originally deferred . . . , and shall impose not less than the full applicable Level V sentence mandated for the offense No credit time shall be given for any time spent in boot camp" ² The statutory language clearly provides that Johnson is not entitled to any credit for the time he spent in boot camp.

(6) Johnson's second claim is that his counsel provided ineffective assistance by failing to file motions addressing the boot camp issue. In order to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings

² Del. Code Ann. tit. 11, § 6712(h).

would have been different.³ Although not insurmountable, the Strickland standard is highly demanding and leads to a “strong presumption that the representation was professionally reasonable.”⁴ The defendant must make concrete allegations of actual prejudice, and substantiate them, or risk summary dismissal.⁵

(7) It appears from the record that Johnson was not represented by counsel at the time he filed his motions for sentence modification and his motion for postconviction relief. Even if he had been, his ineffectiveness claim would be meritless because his underlying claim of entitlement to credit for the time he spent at boot camp is meritless. We, therefore, conclude that Johnson’s second claim of ineffective assistance of counsel is likewise unavailing.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

³ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁴ *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

⁵ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).