

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RADEE PRINCE,	§
	§ No. 557, 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 No. 0310011238
	§
Plaintiff Below-	§
Appellee.	§

Submitted: February 16, 2007  
Decided: April 25, 2007

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

**ORDER**

This 25th day of April 2007, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Radee Prince, filed an appeal from the Superior Court’s September 19, 2006 order denying his motion for correction of sentence pursuant to Superior Court Criminal Rule 35(a). We find no merit to the appeal. Accordingly, we affirm.

(2) In December 2003, Prince pleaded guilty to fifteen counts of Burglary in the Third Degree. He was sentenced to a total of twenty-five years of Level V imprisonment, to be suspended after two years for two

years of probation.<sup>1</sup> Prince also was ordered to make full restitution to the burglary victims in accordance with a schedule to be established by the probation officer. The amount of restitution owed was over \$34, 500.

(3) In July 2004, the Superior Court modified Prince's sentencing order to include a list of the individuals to whom restitution was owed and the amount due to each. In December 2004, the Superior Court again modified Prince's sentencing order, this time suspending his Level V sentence on IN03-11-1799 for one year of Level V imprisonment, to be suspended for two years of Level IV home confinement. The provisions regarding restitution remained in effect.

(4) In February 2006, Prince was found to have committed a violation of probation ("VOP") for violating his curfew and failing to make any restitution payments. However, the Superior Court's VOP sentencing order erroneously encompassed only two of Prince's fifteen convictions---specifically, VN03-11-1799 and VN03-11-1800. The Superior Court continued Prince's probation on those convictions "as previously imposed."

(5) In March 2006, the Superior Court held another hearing to correct its February 2006 sentencing order. Prince was sentenced on VN03-11-1799 to one year of Level V incarceration, to be suspended for one year

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<sup>1</sup> On both IN03-11-1799 and IN03-11-1800, the convictions at issue in this appeal, Prince was sentenced to three years of Level V incarceration.

at Level III. On VN03-11-1800, he was sentenced to one year of Level V incarceration, to be suspended for one year at Level I. The provisions on restitution remained in effect.

(6) In May 2006, the Superior Court again found Prince to have committed a VOP by violating his curfew, failing to report to his probation officer, and failing to make the appropriate restitution payments. The transcript of the VOP hearing reflects that Prince had paid only \$300 of the over \$34,500 owed. Prince was sentenced on VN03-11-1799 to one year of Level V incarceration, to be followed by decreasing levels of supervision and on VN03-11-1800 to one year of Level V incarceration, to be followed by decreasing levels of supervision. Again, the provisions on restitution remained in effect.

(7) In this appeal, Prince claims that the VOP sentences imposed by the Superior Court in March 2006 were illegal because the probationary terms on VN03-11-1799 and VN03-11-1800 had already expired and, therefore, the Superior Court lacked jurisdiction to impose VOP sentences on those convictions.

(8) Del. Code Ann. tit. 11, §4104(d) provides that “[f]or purposes of ensuring the payment of fines, restitution and the enforcement of any orders imposed under this section, the [Superior Court] shall retain

jurisdiction over the convicted person until any fine or restitution imposed shall have been paid in full.” Moreover, Del. Code Ann. tit. 11, § 4334(c) provides that, once a violation of probation is established, “the [Superior Court] may continue or revoke the probation or suspension of sentence, and may require the probation violator to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.”

(9) The record reflects that, at the time the Superior Court imposed its VOP sentences in March 2006, Prince had paid no restitution, as required by his December 2003 sentencing order. Thus, the Superior Court had jurisdiction over Prince, and will continue to have jurisdiction over Prince, until his restitution is paid in full. Moreover, the Level V sentences the Superior Court imposed in VN03-11-1799 and VN03-11-1800 were not illegal because they did not exceed the Level V time remaining on those sentences.

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

BY THE COURT:

/s/ Randy J. Holland  
Justice