

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRANDEN WALLACE,	§
	§ No. 361, 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. 0105007816
	§
Plaintiff Below-	§
Appellee.	§

Submitted: March 14, 2007

Decided: May 7, 2007

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 7th day of May 2007, upon consideration of the briefs on appeal, the record below, the Superior Court’s supplemental orders on remand, and the supplemental submissions of the parties, it appears to the Court that:

(1) The defendant-appellant, Branden Wallace, appeals from the Superior Court’s June 22, 2006 and January 11, 2007 orders denying his motion for correction of an illegal sentence pursuant to Superior Court Criminal Rule 35(a). We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In September 2001, Wallace pled guilty to Possession with Intent to Deliver Heroin, Assault on a State Officer, and a number of other

related charges. He was sentenced to a total of ten years of Level V incarceration, to be suspended after successful completion of the Key Program for one year at Level IV Crest, to be followed by a total of four years of Level III probation and one year of Level II probation.

(3) The Superior Court subsequently modified Wallace's sentences on August 23, 2004 and October 8, 2004. In its October 8, 2004 sentencing order, the Superior Court modified Wallace's sentence for Assault on a State Officer to two years at Level V, to be suspended for one year at Level IV Crest Aftercare. No probationary term was imposed.

(4) In April 2006, Wallace pled guilty to new felony charges. Following a violation of probation ("VOP") hearing in May 2006, the Superior Court found that Wallace had committed a VOP, revoked his probation and, on May 9, 2006, sentenced him to one year of Level V incarceration.

(5) In his appeal, Wallace claimed that his VOP sentence is illegal because he was not on probation at the time the violation occurred and, therefore, the Superior Court should have granted his motion. Wallace based his claim upon the Superior Court's October 8, 2004 modified sentencing order, which suspended Wallace's Level V sentence for Assault on a State Officer for one year at Level IV Crest Aftercare, but did not

impose a probationary term. The State's position was that, because the Superior Court's sentencing order did not correctly reflect its original intent to impose a probationary term, the matter should be remanded to permit the Superior Court to modify the sentencing order to reflect its original intent.

(6) By Order dated December 4, 2006, we remanded this matter to the Superior Court for the purpose of reviewing and, if warranted, modifying its October 8, 2004 sentencing order. On January 9, 2007, the Superior Court signed a corrected October 8, 2004 sentencing order, which sentenced Wallace on the conviction of Assault on a State Officer to two years at Level V, to be suspended for two years at Level IV Crest Aftercare, to be suspended after four months for one year at Level III. Reading the sentencing order as a whole, the effect of this change was to give Wallace a total of two years of probation at Level III.¹

(7) Also on January 9, 2007, the Superior Court signed a second order explaining that, based on notes from its file, its October 8, 2004 sentencing order was issued in response to a request from Wallace's probation officer, who asked that Wallace's sentence be modified to consolidate his probationary terms to run concurrently for two years

¹ Wallace also had been sentenced to a one year, consecutive term of Level III probation for Possession of Heroin Within 1,000 Feet of a School. All of his other probationary terms were concurrent.

effective August 20, 2004. The Superior Court further explained that the order did not reflect the probation officer's request, as it was intended to do.

(8) On January 11, 2007, the Superior Court judge who had originally denied Wallace's Rule 35(a) motion issued a supplemental order on remand again denying Wallace's motion. In the order, the judge confirmed that, based upon the corrected sentencing order issued on January 9, 2007, Wallace was on probation on the date he was violated and would have remained on probation until August 20, 2006.

(9) The Superior Court had the authority to correct its sentencing order to reflect its original intent.² It is apparent in this case that the Superior Court's October 8, 2004 sentencing order did not reflect its intent to honor the request of Wallace's probation officer and give Wallace two years of concurrent probation at Level III. Once the October 8, 2004 sentencing order was corrected to reflect the Superior Court's original intent, Wallace's motion to correct his sentence was properly denied.³ We, therefore, conclude that the Superior Court's denial of Wallace's Rule 35(a) motion to correct his sentence must be affirmed.

² *Guyer v. State*, 453 A.2d 462, 464-65 (Del. 1982).

³ While Wallace correctly points out that this Court's December 4, 2006 order erroneously referred to Level IV supervision as "probation," that error has no impact on the result in this case.

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

BY THE COURT:

/s/ Carolyn Berger
Justice