

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHNAS J. ORTIZ,	§
	§ No. 119, 2008
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. 0602006591
	§
Plaintiff Below-	§
Appellee.	§

Submitted: May 23, 2008

Decided: June 23, 2008

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

ORDER

This 23rd day of June 2008, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Johnas J. Ortiz, filed an appeal from the Superior Court’s February 8, 2008 order denying his motion for credit for time served. We find no merit to the appeal. Accordingly, we affirm

(2) In June 2006, Ortiz pleaded guilty to Felony Theft. He was sentenced to two years at Level V, to be suspended for one year at Level III. At that time, Ortiz was on probation in connection with another conviction in Criminal Identification Number 0308001824. For the violation of probation (“VOP”), he received a sentence of two years and nine months at

Level V, to be suspended after serving four months and three days for one year at Level III.

(3) In August 2006, Ortiz was found to have committed a VOP in connection with both convictions. He was sentenced to eighteen months at Level V, to be suspended after six months, with no probation to follow, in Cr. ID No. 0308001824 and to two years at Level V, to be suspended for six months Level IV home confinement, followed by eighteen months at Level III, in Cr. ID No. 0602006591.

(4) In June 2007, Ortiz was found to have committed a second VOP in connection with Cr. ID No. 0602006591. He was sentenced to two years at Level V, to be suspended for two months at Level IV VOP Center, followed by eighteen months at Level III, followed by one year at Level I. In December 2007, Ortiz was found to have committed a third VOP, also in connection with Cr. ID No. 0602006591. He was sentenced to eight months at Level V, with no probation to follow.

(5) In this appeal from the Superior Court's denial of his motion for credit for time served, Ortiz claims that the Superior Court's December 6, 2007 sentencing order did not properly credit him with time previously spent at Level V from February to March, 2007 and from May to June, 2007, when he spent forty-five days at Level V awaiting bed space at Level IV.

(6) Ortiz' claim is premature. While he is correct that the Superior Court must give him credit for all time previously served at Level V when re-imposing a Level V sentence after a finding of a VOP,¹ the Superior Court did not impose the full amount of Level V time remaining on his original sentence in Cr. ID No. 0602006591.² As such, it is premature for Ortiz to claim that he has not received proper credit. If, at some point in the future, the Superior Court imposes the remainder of his Level V sentence in Cr. ID No. 0602006591 and does not give Ortiz credit for all Level V time to which he is entitled, including the forty-five days he claims entitlement to here, then and only then will Ortiz have a claim ripe for consideration by this Court.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

¹ *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999).

² The Superior Court's order states that Ortiz could have been sentenced to more than sixteen months of Level V time.