

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEVIN L. PRIEST,	§	
	§	No. 133, 2007
Defendant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
	§	for New Castle County
v.	§	
	§	
STATE OF DELAWARE,	§	ID No. 0607023844
	§	
Plaintiff Below-	§	
Appellee.	§	
	§	

Submitted: April 14, 2008

Decided: May 9, 2008

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 9th day of May 2008, it appears to the Court that:

(1) Defendant-appellant Kevin L. Priest entered a guilty plea to Possession of Cocaine Within 300 Feet of a Park before the Superior Court. In exchange for his guilty plea, the State dismissed the additional charges of Trafficking in Cocaine, Possession With Intent to Deliver Cocaine, and Possession of Drug Paraphernalia. Priest's sentencing order reflects that the Superior Court imposed 3 years of Level V incarceration, to be suspended after 1 year for 1 year at Level III probation. Priest appealed, and Priest's counsel filed a brief and a motion to withdraw pursuant to Rule 26(c). We initially found that the sentencing order

conflicted with the transcript of Priest's plea colloquy and remanded to the Superior Court to "to conduct whatever proceedings it deems necessary to clarify the record with respect to Priest's sentence."¹

(2) The Superior Court judge noted that the transcript was "incorrect" and made the following finding of fact:

Read as a whole, the transcript supports the sentencing order signed by the Court which imposes one year at Supervision Level 5 followed by one year at Supervision Level 3. Significantly, [defense counsel], who represented the defendant in this matter, acknowledged at the sentencing hearing that the State, which had been recommending eighteen months at Supervision Level 5 followed by probation, had changed its position and was then recommending twelve months at Supervision Level 5. There would still be probation to follow. . . . [T]he Superior Court concludes . . . that the defendant was in fact sentenced to one year of incarceration at Supervision Level 5 followed by one year of probation at Supervision Level 3.

The matter was returned to this Court and the parties were directed to file supplemental briefs.

(3) In his supplemental brief to this Court, defense counsel "candidly admit[s] that the express terms of the Plea Agreement, the State's recitation of its Sentencing recommendation contained in the Plea Agreement, and [defense] counsel's comments on the terms of the Plea Agreement and the Sentencing recommendation are consistent with the specifics of the formal Sentencing Order

¹ *Priest v. State*, No. 133, 2007, at ¶ 6 (Del. Supr. Dec. 4, 2007).

rather than the Sentence announced in court.” The State has responded to the position taken by counsel and has moved to affirm the Superior Court’s judgment.

(4) Although “[f]ederal courts have consistently held that when there is a direct conflict between an unambiguous oral pronouncement of a sentence and the written judgment, the oral pronouncement controls,”² Delaware has not adopted the federal rule.³ Our statutory and case law, however, “authorize[s] sentence correction for errors resulting from ‘oversight or omission.’”⁴ Here, the “oversight or omission” is not with the actual written judgment, but with the oral pronouncement, which the Superior Court judge found was incorrect to the extent that it “indicate[d] some discrepancy as to the sentence actually imposed.” Defense counsel concedes as much and requests that the matter should be remanded to amend the sentencing transcript. Amending the sentencing transcript is unnecessary because the record is sufficient for us to conclude that the formal sentencing order reflects the actual sentence imposed during the Superior Court judge’s oral pronouncement.⁵

² *Bland v. State*, 911 A.2d 802, 2006 WL 2960050, at *1 (Del. Supr.) (citing cases).

³ *Id.*

⁴ *Id.* (citing *Guyer v. State*, 453 A.2d 462, 464 (Del. 1982) and Super. Ct. Crim. R. 36).

⁵ *See id.* (“The Superior Court has amended sentencing orders to accurately reflect the intended sentence.”); *Gibbs v. State*, 229 A.2d 502, 504 (Del. 1967) (noting that the Superior Court has inherent authority “to amend its records to make them conform to the facts and truth of the case” and under Superior Court Criminal Rule 36, may correct any “ambiguous or erroneous recording of a sentence imposed in open court”). *See also* 11 Del. C. § 4501 (“In a criminal case, judgment

(5) This Court has reviewed the record carefully and has concluded that Priest's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Priest's counsel has made a conscientious effort to examine the record and the law and has properly determined that Priest could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is **GRANTED**. The judgment of the Superior Court is **AFFIRMED**. The motion to withdraw is moot.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

shall not be reversed for any clerical misprision or formal defect, if the record contains substantial ground for judgment.”).