## IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

	)	
MARK A. DRUMMOND,	)	CR. A. No. IN96010681
DOB: 5/18/68	) )	I.D. No: 9512013514
V.	)	HABEAS CORPUS PETITION
STATE OF DELAWARE	)	
	)	

## **ORDER**

AND NOW, TO WIT, this 29th day of January 2002, upon review of the forgoing Petition for a Writ of Habeas Corpus and the record in this case, IT IS HEREBY ORDERED that Petitioner Mark A. Drummond's petition is **DENIED** as he is being held pursuant to lawful orders of this Court dated October 25, 1996.

1. On October 25, 1996, as to IN96-01-0688, in which the Defendant was placed in the custody of the Department of Corrections at Level V for a period of 18 years, and given credit for 3 days previously served. As to IN96-01-0681, effective at the end of 0688, Defendant was to be placed in the custody of the Department of Corrections at Level V for 6 years. As to IN96-01-0692, effective at the end of 0681, Defendant was to be placed in the custody of the Department of Corrections at Level V for a period of 8 years. After serving 3 years at Level V, this sentence is suspended for 5 years at Level IV–Work Release Program. After serving 6 months at Level IV, this sentence is suspended for 4 years 6 months at Level III. Hold Defendant at Level V until Level IV is available.

- 2. Petitioner has filed a petition for a Writ of Habeas Corpus requesting that his sentence as to IN96-01-0681 be vacated in accordance with Delaware Supreme Court's ruling in *Nave v. State of Delaware*, 783 A.2d 120 (Del. 2001).
- 3. The ruling in *Nave* however, is not relevant to Defendant's situation, since Defendant's sentence was never corrected *sua sponte* by the Superior Court without first affording Defendant the opportunity to appear before the Court. Also, the Superior Court never suspended any part of Drummond's original sentence for which it lacked authority under 11 *Del. C.* § 4214(a).
- 4. There is nothing in 11 *Del. C.* 1447(c)<sup>1</sup>, and 11 *Del. C.* 1447A(c)<sup>2</sup> referred to by the Defendant in his petition, that impacts Defendant's sentence.
- 5. Petitioner is therefore, being held pursuant to lawful orders as to IN96-01-0688.
- 6. In a habeas corpus proceeding, the only issues before the court are whether the judgment of conviction at issue was handed down by a court of competent jurisdiction and whether there is a valid commitment to enforce the sentence.<sup>3</sup>

  When a prisoner's commitment is regular on its face, there can be no relief

<sup>&</sup>lt;sup>1</sup>11 *Del. C.* 1447(c) states: Any sentence imposed upon conviction for possession of a deadly weapon during the commission of a felony shall not run concurrently with any other sentence. In any instance where a person is convicted of a felony, together with a conviction for the possession of a deadly weapon during the commission of such felony, such person shall serve the sentence for the felony itself before beginning the sentence imposed for possession of a deadly weapon during such felony.

<sup>&</sup>lt;sup>2</sup>11 *Del. C.* 1447A(c) states: A person convicted under subsection (a) of this section, and who has been at least twice previously convicted of a felony in this State or elsewhere, shall receive a minimum sentence of 5 years at Level V, notwithstanding the provisions of §§ 4205(b)(2) and 4215 of this title.

<sup>&</sup>lt;sup>3</sup>Curran v. Woolly, Del. Supr., 104 A.2d 771, 773 (1954).

through habeas corpus.<sup>4</sup> Petitioner's request does not fall within the ambit of remedy afforded by a Writ of Habeas Corpus.

## IT IS SO ORDERED.

The Honorable Richard S. Gebelein

orig: Prothonotary

cc: Mr. Mark A. Drummond - SCI

Sussex Correctional Institution - Records Dept.

<sup>&</sup>lt;sup>4</sup>Jones v. Anderson, Del. Supr. 183 A.2d 177, 178 (1962).