

August 29, 2001

Mr. Jeffrey Nave
Delaware Correctional Center
RD 1 - Box 500
Smyrna, DE 19977

RE: *Nave v. State*
C.A.No. 01M-03-002-JOH
Petition for Writ of Habeas Corpus - DENIED

Dear Mr. Nave:

You have filed a petition for a *writ of habeas corpus* challenging the validity of the suspended portion of your sentence. That sentence was imposed on January 10, 1992. On that date, I declared you to be an habitual offender under the provisions of 11 *Del.C.* §4214(a); you had been convicted of a fourth separate felony. At that time, I sentenced you to a term of fifteen years as an habitual offender under §4214(a), but suspended it after you served ten years. Your current petition contests this Court's power to suspend any portion of a sentence imposed under §4214(a).

You had raised a similar question in a letter to me in September 29, 1993 about whether this Court could suspend any portion of an habitual offender sentence. In my responding letter to you of October 7, 1993, I stated:

However, there is a portion of your letter in which you question the validity of the sentence which I imposed on you as an habitual offender. Specifically, I imposed upon you a sentence under the habitual offender act of fifteen years in jail which I suspended after ten years. You question the Superior Court's power to suspend any sentence under the habitual offender act. While I and the judges of this Court do not agree that we are prohibited from suspending any portion of a sentence imposed under the habitual offender act, should there be no power to suspend any portion of the sentence, the result in your case would be that you would have to serve all fifteen

years in jail. If the suspension of five years were not proper, it does not mean that the sentence is totally invalid but only that portion of the sentence which was suspended. Therefore, you may want to think about what you want to question in connection with the sentence I imposed under the habitual offender act.¹

At the time that letter was written, judges of this Court believed §4214(a) sentences could be suspended. Our view has since changed.² In your original petition and subsequent correspondence, you cite to the position of the Department of Justice taken in other litigation that no portion of a §4214(a) sentence can be suspended.

That same position has been repeated here in the State's response to the petition.³ In short, therefore, the Court, the State and you are in agreement that no portion of such a sentence can be suspended. The language of §4214(a) prohibits suspension of any portion of the sentence.

The disagreement now, however, arises over the consequences of suspension of five years of your original fifteen-year sentence. You ask that the last five years be stricken, resulting, in effect, in a ten-year sentence. There can be only one result, the one of which you were forewarned in 1993 and which was the only sentence §4214(a) allowed, that is, a full fifteen years of incarceration with no suspension.⁴

Accordingly, your sentence of January 10, 1992 is corrected to impose fifteen years at level 5 effective January 10, 1992. The Court concurs with the position taken by the State in its March 14, 2001 response that you are entitled to earn good time. That, of course would also start on January 10, 1992. This correction of your sentence

¹Letter to Jeffrey Nave (October 7, 1993).

²See for example, *Dixon v. Williams*, Del.Super., C.A.No. 00M-08-023, Herlihy, J. (August 31, 2000).

³Your objection to my request to the State to respond to your petition is ill-founded.

⁴*Bryant v. State*, Del.Supr., No. 253, 1992, Moore, J. (January 8, 1993) (ORDER).

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to impose jail time which the statute mandated neither increases your sentence nor violates any constitutional bar.⁵

CONCLUSION

For the reasons stated herein, therefore, your petition for *writ of habeas corpus* is **DENIED**.

IT IS SO ORDERED.

Sincerely,

JOH/bsr
Enclosure
Original to Prothonotary
cc Loren C. Meyers, Esq.

⁵*White v. State*, Del.Supr., 576 A.2d 1322 (1990).