

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

**DANIEL L. HERRMANN COURT HOUSE
WILMINGTON, DELAWARE 19801**

Joelle Wright, Esquire
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, Delaware 19801

J. Dallas Winslow, Jr., Esquire
Assistant Public Defender
820 N. French Street
Wilmington, Delaware 19801

Re: *State of Delaware v. Daniel Fenimore*
I.D. # 9702013460

Submitted: December 7, 2001
Decided: January 22, 2002

On Defendant's "Motion to Reconsider Decision".
GRANTED IN PART; DENIED IN PART.

Dear Counsel:

This is the Court's decision on Defendant's December 7, 2001 "Motion to Reconsider Decision" in which Defendant essentially asks the Court to terminate Defendant's unexpired probation and to immediately release Defendant from the supervision of the Department of Corrections. Alternatively, Defendant requests that the Court officially order that Defendant has completed the first count of his probation. For the reasons below, the Court **GRANTS** Defendant's motion to order the first count of Defendant's probation as completed, but **DENIES** Defendant's request to terminate Defendant's unexpired probationary period or release Defendant from the supervision of the Department of Corrections.

Initially, the Court notes that under Superior Court Civil Rule 59(e) (Rearguments), made applicable to criminal cases pursuant to Superior Court Criminal Rule 57(d), Defendant's motion is not timely. However, Defendant's motion contains a meritorious argument insofar as Defendant's first period of probation, and accordingly, the Court will not dismiss the motion on timeliness grounds.

Defendant was sentenced by this Court on July 31, 1998, for three counts of Unlawful Sexual Contact Third, and was to serve three consecutive sentences of one-year each at Levels III, II, and II, respectively. After completion of the first period of probation but before completion of the second period, Defendant was charged with violation of probation. Accordingly, in May 2000, this Court resentenced Defendant on all three counts of the original charges and placed him on probation on each count.

Defendant filed a "Motion to Terminate Probation" in September 2001. Following submission of Defendant's motion, Defendant's probation officer submitted a report recommending that Defendant be retained on probation, but that Defendant be moved to Level II for the balance of his probation once Defendant successfully completes a polygraph examination. The Office of the Attorney General thereafter filed a response to Defendant's motion, in which the State requested that Defendant's two unexpired probationary sentences not be terminated. On November 14, 2001, the Court denied Defendant's "Motion to Terminate Probation" and stated that Defendant would be moved to Level II for the balance of his probation once Defendant successfully completed a polygraph examination. At that time, the Court also stated that Defendant's probation was lawfully extended at the May 2000 violation of probation hearing, since the violation occurred during Defendant's a probationary period Defendant was then serving.

Upon reconsideration, the Court finds that while some extension of Defendant's probationary period remains appropriate for the violation of probation, given the fact that the first of Defendant's three consecutive probationary periods had expired at the time of the violation of probation, a modification is in order. Accordingly, the Court finds that Defendant's first count of probation has been concluded.

Lastly, the Probation Officer shall submit a Progress Report to the Court on or before June 1, 2002, advising the Court whether Probation and Parole then thinks it is appropriate to discharge Defendant from probation.

IT IS SO ORDERED.

Very truly yours,

RRC/jkk

Enclosure

cc: Probation Officer Stuart Moskowitz
Prothonotary
Investigative Services