

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2008-0138, State of New Hampshire v. Bobby Dean Freeman, the court on March 24, 2009, issued the following order:

The defendant, Bobby Dean Freeman, appeals an order of the trial court denying his motion to clarify that he has completed the terms of the sentence imposed in December 2000 as the result of a plea agreement. We reverse.

Due process requires a sentencing court to make clear at the time of sentencing the punishment it is imposing as well as the extent to which the court retains jurisdiction to impose punishment at a later date and under what conditions the sentence may be modified. State v. LeCouffe, 152 N.H. 148, 152 (2005). The sentencing order must clearly communicate to the defendant the exact nature of the sentence. *Id.* If the terms of a sentence are not entirely clear at the time of sentencing, we will not speculate about the sentence the court might have intended; rather, we will construe the sentencing order so as to enforce the terms that are clear but not to augment the sentence beyond such terms. State v. Burgess, 141 N.H. 51, 52-53 (1996).

In this case, the defendant was charged with two offenses. The trial court sentenced him to a term of three and a half to seven years on one charge, 2000-S-126, with a provision that allowed suspension of one and a half years of the minimum term upon his meaningful participation in a sexual offender program while incarcerated; the mittimus for the second sentence imposed a sentence of not more than six nor less than three years but suspended the sentence upon good behavior and compliance with the order. The mittimus further provided in relevant part: "The sentence is consecutive to 2000-126. The Court recommends to the Department of Corrections: Sexual offender program. The defendant is placed on probation for a period of 5 year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer. Effective: Upon release from parole on 2000-S-126."

The defendant argues that because he was never placed on parole but rather served the full sentence imposed, the probation portion of his sentence was of no effect. We agree. As the State conceded at oral argument, the sentencing order is not a model of clarity. Its terms could be interpreted to require that the defendant must first be on parole before he could be placed on probation. Given this ambiguity, we decline to speculate about the sentence that the trial court

might have intended. *See id.* We therefore reverse the order of the trial court denying the defendant's motion to clarify.

Reversed.

DALIANIS, DUGGAN and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**