

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JESSE C. STANSEL,	§
	§
Defendant Below,	§ No. 17, 2016
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§
STATE OF DELAWARE,	§ Cr. ID Nos. 1404021446 &
	§ 1405005851
Plaintiff Below,	§
Appellee.	§
	§

Submitted: March 31, 2016
Decided: May 3, 2016

Before **HOLLAND, VALIHURA, and VAUGHN**, Justices.

ORDER

This 3rd day of May 2016, upon consideration of the appellant’s opening brief, the appellee’s motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Jesse C. Stansel, filed this appeal from the Superior Court’s December 11, 2015 order sentencing him for a violation of probation (“VOP”). The State of Delaware has moved to affirm the Superior Court’s judgment on the ground that it is manifest on the face of Stansel’s opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that, in September 2014, Stansel resolved two cases by pleading guilty to two counts of Criminal Trespass in the First Degree and one count each of Failure to Comply with Taking of Photographs or Fingerprints and Criminal Mischief. Stansel was sentenced as follows: (i) for one count of Criminal Trespass in the First Degree, one year of Level V incarceration, suspended upon completion of a Level IV residential substance abuse treatment program; (ii) for the other count of Criminal Trespass in the First Degree, one year of Level V incarceration, suspended for one year of Level III Aftercare; (iii) for Failure to Comply with Taking of Photographs or Fingerprints, one year of Level V incarceration, suspended for one year of Level III Aftercare; (iv) for Criminal Mischief, one year of Level V incarceration, suspended for one year of Level III probation. Stansel did not appeal the Superior Court's judgment.

(3) On November 5, 2015, an administrative warrant was filed for Stansel's VOP. The warrant alleged that Stansel had been discharged from the Crest program for multiple violations of the program. On December 11, 2015, the Superior Court found that Stansel had violated his probation. Stansel was sentenced to one year of Level V incarceration for Failure to Comply with Taking of Photographs or Fingerprints. Stansel was discharged as unimproved for his other convictions. This appeal followed.

(4) In his opening brief, Stansel argues that the sentence for Failure to Comply with Taking of Photographs or Fingerprints exceeds the Sentencing Accountability Commission (“SENTAC”) sentencing guidelines. To the extent Stansel is challenging the original sentence, that claim is outside the scope of this appeal.¹ To the extent Stansel is challenging the VOP sentence, that claim is without merit.

(5) It is well-settled that the SENTAC guidelines are non-binding and do not provide a basis for appeal of a sentence that is within the authorized statutory limits.² Once Stansel committed a VOP, the Superior Court could impose any period of incarceration up to and including the balance of the Level V time remaining on Stansel’s sentences.³ The Level V sentence imposed for Stansel’s VOP in connection with his conviction for Failure to Comply with Taking of Photographs or Fingerprints—one year of Level V incarceration—did not exceed the one year of Level V time previously suspended for that conviction and was within statutory limits.

¹ See, e.g., *Eley v. State*, 2006 WL 435592, at *1 (Del. Feb. 21, 2006) (holding appellant could not collaterally attack sentences on convictions underlying VOP in appeal from VOP).

² *Siple v. State*, 701 A.2d 79, 83 (Del. 1997).

³ 11 *Del. C.* § 4334(c); *Pavulak v. State*, 880 A.2d 1044, 1046 (Del. 2005).

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED and the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Karen L. Valihura
Justice