IN THE SUPREME COURT OF THE STATE OF DELAWARE

DANIEL DIAZ,	§	
	§	
Defendant Below-Appellant,	§	No. 440, 2013
	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware,
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr. ID 0606013407
Plaintiff Below-Appellee.	§	
	§	

Submitted: January 31, 2014
Decided: March 13, 2014

Before **HOLLAND**, **JACOBS**, and **RIDGELY**, Justices.

O R D E R

This 13th day of March 2014, upon consideration of the parties' briefs and the record below,[1] it appears to the Court that:

(1) The defendant-appellant, Daniel Diaz, filed this appeal from the Superior Court's order sentencing him for a violation of probation (VOP). Among other things, Diaz contends that the evidence presented at the VOP hearing was insufficient to sustain the Superior Court's findings, that his sentence violates double jeopardy, that the sentencing judge was biased, and

[1] The State filed a motion seeking to revoke Diaz's *in forma pauperis* status. Given our ruling on the merits of Diaz's appeal, the State's motion is now moot.

that he was denied due process. We find no merit to Diaz's appeal. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that Diaz was arrested in 2006 on multiple charges related to several bank robberies. In December 2006, Diaz pled guilty to two counts of Robbery in the First Degree and one count of Robbery in the Second Degree. The Superior Court sentenced him in February 2007 to a total period of twelve years at Level V incarceration to be suspended after serving six years in prison, at decreasing levels of supervision. In April 2013, Diaz was arrested on a new criminal charge of Drug Dealing. As a result, he also was charged with violating probation for committing a new criminal offense, for leaving the State without authorization, and for being in possession of a controlled substance that was not legally prescribed.

(3) A contested VOP hearing was held on July 24, 2013. The State's evidence reflected that the Delaware State Police had received information from a confidential informant (CI) that Diaz was selling heroin in the Newark and New Castle areas. The CI told police that Diaz would re-supply his drugs by driving to Philadelphia in a silver Ford Taurus with Pennsylvania tags. The silver Ford previously had been observed by his probation officer parked outside Diaz's home. As a result of the CI's information, police made an undercover, controlled drug purchase from Diaz. They also obtained a

warrant to place a GPS tracking device on the silver Ford. The monitoring device reflected Diaz leaving Delaware on three occasions. On the third occasion, police stopped his vehicle. After obtaining a warrant, they searched the car and found over 10,000 bags of heroin hidden in a secret compartment. At the conclusion of the State's evidence, the defendant did not contest that the State had established a basis for the VOP. The Superior Court immediately sentenced Diaz to a total of six years at Level V incarceration, which was all of the Level V time remaining to be served from his original sentence, followed by a six month transition period of probation.

(4) Diaz raises six issues in his opening brief on appeal. First, he contends that the evidence was insufficient to support his VOP conviction. Second, he contends that he was unfairly convicted on the basis of the unreliable hearsay evidence of the confidential informant. Third, Diaz alleges a double jeopardy violation because he was convicted of a VOP based on criminal charges that had not been proven beyond a reasonable doubt. Fourth, he asserts that the judge was biased against him and sentenced him with a closed mind. Fifth, he contends that he was denied due process because the State proceeded with his VOP hearing before his trial on the new criminal charges. Finally, he asserts that his sentence was illegal because it was based on inaccurate or unreliable evidence.

(5) We find no merit to any of Diaz's contentions. In a VOP hearing, unlike a criminal trial, the State is only required to prove by a preponderance of the evidence that the defendant violated the terms of his probation.[2] A preponderance of evidence means "some competent evidence" to "reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation."[3] Furthermore, the rules of evidence are relaxed in a VOP hearing, and hearsay evidence is admissible.[4]

(6) In this case, it is clear that Diaz had notice of the alleged violation, was present at the VOP hearing, and had the opportunity to cross-examine all of the State's witnesses. Rather than presenting any evidence of his own, Diaz did not contest that the State had established a VOP. Under these circumstances, the evidence was more than sufficient to sustain the Superior Court's finding of a VOP, and there is nothing in the record to substantiate Diaz's claims of either perjury by the State's witnesses or any due process violation.

(7) Moreover, double jeopardy is not implicated in this case simply because the conduct that led to new criminal charges against Diaz also formed

---

[2] *Kurzmann v. State*, 903 A.2d 702, 716 (Del. 2006).

[3] *Id*. (*quoting Collins v. State*, 897 A.2d 159, 160 (Del. 2006)).

[4] *Id*.

the basis of his VOP charge.[5] Nor was the State obligated to pursue the new criminal charge before it proceeded with the VOP charge.[6] Consequently, we find no merit to any of Diaz's contentions challenging the legality of the Superior Court's VOP adjudication.

(8) Diaz's remaining arguments challenge the legality of his sentence. He contends that his sentence is illegal because it was based on the inaccurate and unreliable testimony of the arresting officer and because the sentencing judge had a closed mind. Given Diaz's admission at his VOP hearing that the State had established the VOP against him, we find no merit to his conclusion that the VOP sentence was based on inaccurate or unreliable information. Moreover, this Court's appellate review of a sentence is extremely limited. Our review generally ends once we determine that the sentence is within the statutory limits prescribed by the legislature.[7] In sentencing a defendant for a VOP, the trial court is authorized to impose any period of incarceration up to and including the balance of the Level V time remaining to be served on the original sentence.[8] In this case, the Superior Court noted the seriousness of the underlying offenses (i.e., robbery) for

---

[5] *Waters v. State*, 2012 WL 1655706 (Del. May 9, 2012).

[6] *Odom v. State*, 2012 WL 3656367 (Del. Aug. 24, 2012); *Brown v. State*, 2011 WL 253151 (Del. Jan. 25, 2011).

[7] *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).

[8] DEL. CODE ANN. tit. 11, § 4334(c) (2007).

which Diaz was originally convicted and the seriousness of the subsequent crime for which Diaz was charged in 2013 as a basis for reimposing the entire balance of the Level V time remaining on Diaz's original sentences. Under the circumstances, the sentence was authorized by law, was neither arbitrary nor excessive, and does not reflect any evidence of a closed mind by the sentencing judge.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice