IN THE SUPREME COURT OF THE STATE OF DELAWARE

JACOB SANTIAGO,	§	
	§	No. 235, 2014
Defendant Below-Appellant,	§	
	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware,
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr. ID 1112008352
Plaintiff Below-Appellee.	§	
	§	

Submitted: September 10, 2014
Decided: September 30, 2014

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

O R D E R

This 30th day of September 2014, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The defendant-appellant, Jacob Santiago, filed this appeal from the Superior Court's order, dated April 9, 2014, sentencing him for a violation of probation (VOP). The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Santiago's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Santiago pled guilty on June 6, 2012 to Aggravated Drug Dealing.[1] The Superior Court immediately sentenced Santiago to ten years at Level V incarceration, to be suspended after six months for six months at Level IV Home Confinement followed by one year at Level III probation. In January 2014, police arrested Santiago, charging him with Carrying a Concealed Deadly Weapon, Possession of a Deadly Weapon by a Person Prohibited, and Resisting Arrest.[2] As a result of these new criminal charges, Santiago was charged with a VOP for violating the conditions of his probation that prohibited him from possessing a firearm and from committing new criminal offenses. Following a hearing, the Superior Court found Santiago had violated probation and sentenced him to nine years at Level V incarceration, to be suspended after two years for six months at Level III probation. Santiago now appeals.

(3) In his opening brief on appeal, Santiago does not dispute that he committed the VOP as charged. His only contention on appeal is that the officers who arrested him used excessive force and broke his arm, which required surgery and caused him permanent disability.

[1] 16 *Del. C.* § 4752(2).

[2] A Superior Court jury ultimately found Santiago guilty of all three charges on August 13, 2014.

(4) The issue Santiago raises, however, is not cognizable in this appeal from his VOP sentence. This Court reviews a VOP finding for abuse of discretion.[3] In a VOP hearing, the State is only required to prove by a preponderance of the evidence that the defendant violated the terms of his probation.[4] 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."[5] In this case, Santiago does not dispute that he was in possession of a weapon in violation of the terms of his probation. Accordingly, we find no basis to overturn the Superior Court's judgment.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

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

[4] *Id.*

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