IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL LOPEZ,

Defendant BelowAppellant,

v.

S Court Below—Superior Court
of the State of Delaware,
STATE OF DELAWARE,
STATE OF DELAWARE,
Plaintiff BelowAppellee.

S No. 511, 2012
S of the Superior Court
of the State of Delaware,
STATE OF DELAWARE,
Appellee.
S and 1203005378

Submitted: December 3, 2012 Decided: February 5, 2013

Before STEELE, Chief Justice, HOLLAND and BERGER, Justices.

ORDER

This 5th day of February 2013, 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, Michael Lopez, filed this appeal from the Superior Court's sentence for a violation of probation (VOP). The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Lopez's opening brief that his appeal is without merit. We agree and affirm.
- (2) The record reflects that Lopez pled guilty on December 8, 2010 to Delivery of Oxycodone. The Superior Court immediately sentenced Lopez to ten years at Level V incarceration, with credit for seven days

served, to be suspended immediately for eighteen months at Level III probation. Thereafter, Lopez was found in violation of the terms of his probation on three separate occasions. In connection with his second VOP, Lopez also pled guilty to a misdemeanor charge of Possession of a Controlled Substance. On May 8, 2012, the Superior Court sentenced Lopez on the new conviction to one year at Level V incarceration, to be suspended immediately for one year of counseling in the Level III Fellowship Health Resources Program.

- (3) On August 21, 2012, the Superior Court held a hearing on Lopez's third VOP in connection with his felony conviction and the first VOP in connection with his misdemeanor conviction. The Superior Court found Lopez had violated the terms of both probationary sentences and resentenced Lopez to a total period of eleven years at Level V incarceration, with credit for thirty-seven days served, to be suspended upon successful completion of the Key Program for one year at Level IV Residential Substance Abuse Treatment, to be suspended upon successful completion of treatment for eighteen months at Level III Aftercare. Lopez appeals that sentence.
- (4) Lopez raises three issues in his opening brief on appeal. First, he contends that the prosecutor engaged in misconduct at the VOP hearing

held on August 21, 2012. He next contends that the evidence was insufficient to support the VOP adjudication because he had a valid prescription for the drug that was found in his possession. Finally, he contends that the Superior Court judge sentenced him with a closed mind, as evidenced by the harsh sentence imposed.

- (5) With respect to his sentencing claim, the Superior Court, upon finding that Lopez had violated probation, was authorized to impose any period of incarceration up to and including the balance of the Level V time remaining to be served on Lopez's original sentences.¹ In this case, the Superior Court suspended all of the Level V time remaining on Lopez's sentences upon his successful completion of the Key Program, to be followed by one year at Level IV residential drug treatment and eighteen months at Level III Aftercare. This sentence was well within statutory limits, was not excessive, and in no way reflects a closed mind by the sentencing judge.²
- (6) Lopez's remaining claims allege prosecutorial misconduct and insufficient evidence. We are unable to review these claims, however, because Lopez failed to order and provide this Court with a copy of the

¹ Del. Code Ann. tit. 11, § 4334(c) (2007).

² See Weston v. State, 832 A.2d 742, 746 (Del. 2003).

transcript from his VOP hearing. As the Court has held many times, the failure to include adequate transcripts of the proceedings, as required by the rules of the Court, precludes appellate review of a defendant's claims of error in the proceedings below.³

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

BY THE COURT:

/s/ Randy J. Holland
Justice

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³ *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).