IN THE SUPREME COURT OF THE STATE OF DELAWARE

| | | |
|---|---|---|
| REGINALD D. WATERS, | § | |
| | § | No. 595, 2013 |
| Defendant Below, | § | |
| Appellant, | § | Court Below—Superior Court |
| | § | of the State of Delaware, |
| v. | § | in and for Kent County |
| | § | |
| STATE OF DELAWARE, | § | Cr. ID 1101006766A |
| | § | |
| Plaintiff Below, | § | |
| Appellee. | § | |

Submitted: April 10, 2014
Decided: May 30, 2014

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

**O R D E R**

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

(1) The defendant-appellant, Reginald Waters, appeals from the Superior Court's sentence for a violation of probation (VOP). The State of Delaware has moved to affirm the trial court's judgment on the ground that it is manifest on the face of Waters' opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Waters pled guilty on July 3, 2013 to one count of Unlawful Sexual Contact in the Second Degree. The Superior Court immediately sentenced Waters to three years at Level V incarceration,

to be suspended after serving nineteen months for decreasing levels of supervision. Waters did not appeal.

(3) In September 2013, Waters was charged with a VOP. Among other things, Waters was charged with violating the terms of his probation by testing positive for drug use, traveling out-of-state without permission, and being arrested on new criminal charges. On October 18, 2013, following a contested hearing, the Superior Court found Waters in violation of his probation. The Superior Court sentenced him to one year and five months at Level V incarceration, suspended immediately for eight months at Level IV Work Release, followed by one year at Level III probation. The Superior Court also sentenced Waters to two years at Level V incarceration, suspended for one year at Level III probation, for violating probation with respect to an earlier conviction for Tampering with a Witness.

(4) In his opening brief on appeal, Waters claims that he did not admit to violating probation by leaving the State without permission or by submitting two positive urine screens (although he does not deny that he was arrested on new criminal charges on September 25, 2013). Waters also argues that he was denied his right to representation by his privately-retained attorney at the VOP hearing and that the Superior Court denied him the right to address the court. Waters also contends that his sentence was illegal.

(5) First, we note that Waters failed to provide this Court with a copy of the transcript of his VOP hearing.[1] 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.[2] Accordingly, we are unable to review Waters' contentions alleging errors with respect to the Superior Court's VOP adjudication.

(6) Regarding his remaining sentencing claim, we find no merit to Waters' contention that his VOP sentence is illegal. Upon finding Waters in violation of his probation, the Superior Court was authorized to require Waters to serve the entire length of his remaining suspended prison term.[3] Thus, the Superior Court, as a matter of law, could have ordered Waters to serve the entire seventeen months remaining on his original sentence at Level V imprisonment. The Superior Court, however, reimposed a seventeen month sentence at Level V incarceration, but suspended the sentence immediately for eight months at Level IV Work Release followed

---

[1] The record reflects that Waters was instructed to file a motion for transcripts at State expense in the Superior Court. Waters failed to file a motion in compliance with the Superior Court's rules by the required due date. Therefore, his appeal proceeded without the transcripts.

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

[3] *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999).

by Level III probation. That sentence was legal. Without more, the Court finds nothing on the face of the Superior Court's sentencing order to reflect any error in Waters' sentence.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice