IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL R. DUNBAR,	§	
	§	No. 643, 2013
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0703007316
Appellee.	§	

Submitted: February 28, 2014
Decided: April 15, 2014

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

O R D E R

This 15th day of April 2014, upon consideration of the parties' briefs and the Superior Court record, it appears to the Court that:

(1) On October 8, 2008, the appellant, Michael R. Dunbar, pled guilty but mentally ill to Manslaughter as a lesser-included offense of Murder in the First Degree. On December 12, 2008, the Superior Court sentenced Dunbar to fifteen years at Level V suspended after five years for decreasing levels of supervision.

(2) On June 28, 2012, Dunbar was convicted of violating probation (VOP) and was resentenced to ten years at Level V suspended for five years at Level III. On August 31, 2012, Dunbar was again found guilty of VOP and was resentenced to nine years and six months at Level V suspended for nine years and

six months at Level IV Crest suspended after successful completion for four years at Level III. On May 30, 2013, the Superior Court modified the August 31, 2012 VOP sentence by removing the Level IV Crest component and placing Dunbar on Level III probation.

(3) On October 31, 2013, the Superior Court found Dunbar guilty of his third VOP and resentenced him to nine and six months at Level V suspended upon successful completion of Level V Key for four years at Level IV Crest suspended upon successful completion for four years at Level III aftercare. This appeal followed.

(4) In his opening brief on appeal, Dunbar asserts that the "technical" nature of his third VOP did not warrant a prison sentence. Dunbar also suggests that he has not been given adequate credit for time previously served.

(5) The Court's appellate review of a sentence generally is limited to whether the sentence exceeds the statutory limits.[1] "[O]nce a defendant violates the terms of his probation, the Superior Court has the authority to require a defendant to serve the sentence imposed, or any lesser sentence."[2] A subsequent VOP sentence cannot exceed the term that a prior VOP sentence left suspended.[3]

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

[2] *State v. Sloman*, 886 A.2d 1257, 1260 (Del. 2005) (citing Del. Code Ann. tit. 11, § 4334(c)).

[3] *Pavulak v. State*, 880 A.2d 1044, 1045-46 (Del. 2005).

In this case, because the sentence imposed on August 31, 2012 and modified on May 30, 2013 for Dunbar's second VOP imposed nine years and six months at Level V suspended entirely for four years at Level III probation, the Superior Court was authorized to impose nine years and six months at Level V when sentencing Dunbar on October 31, 2013 for his third VOP.

(6) Dunbar suggests that he has not been given credit for time served. Dunbar has not, however, identified what dates he served for which he has not received credit. Nor has he shown that he presented the time-served credit claim to the Superior Court in the first instance. Under the circumstances, Dunbar's claim for time-served credit is not appropriate for appellate review and has not been considered by the Court.

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

BY THE COURT:

/s/ Randy J. Holland
Justice