IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID GILLESPIE,	§	
	§	
Defendant Below- Appellant,	§	No. 694, 2013
	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware,
	§	in and for Sussex County
STATE OF DELAWARE,	§	Cr. ID 1111001471
	§	
Plaintiff Below- Appellee.	§	
	§	

Submitted: February 17, 2014
Decided: March 18, 2014

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

O R D E R

This 18th day of March 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, David Gillespie, filed this appeal from the Superior Court's order, dated December 11, 2013, which denied his motion for modification of sentence. The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Gillespie's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that, in August 2012, Gillespie pled guilty to a fifth offense of Driving Under the Influence. The Superior Court

sentenced him to five years at Level V incarceration, with credit for twenty-one days previously served, to be suspended after serving eight months at Level V incarceration for one year at Level IV Residential Treatment, to be suspended upon the successful completion of the treatment program for one year at Level III Aftercare. Gillespie did not appeal. On December 21, 2012, Gillespie left the Level IV Crest facility without successfully completing the program. As a result, on March 22, 2013, the Superior Court found Gillespie in violation of his probation and sentenced him to four years and two months at Level V incarceration to be suspended upon successful completion of the Level V Key Program for decreasing levels of supervision. Gillespie did not timely appeal to this Court from his VOP sentence. Instead, on October 23, 2013, he filed a motion for sentence modification, which the Superior Court denied in December 2013. This appeal followed.

(3) In his opening brief on appeal, Gillespie argues that the Superior Court erred in its original sentence and in its VOP sentence by ordering him to participate in the Level IV Crest Program. Gillespie contends that he takes a legally prescribed pain medication and the requirements of the Crest Program would not allow him to participate in the work release portion of the program unless he stopped taking his narcotic

2

painkiller.[1] Gillespie was informed that, rather than participating in a work program outside of the facility while under the influence of a narcotic, he would be confined to the Crest facility for the entirety of the Level IV portion of his sentence. Gillespie does not dispute that he voluntarily left the program, thus committing a violation of his probation, because he was unhappy about the prospect of not being able to participate in work release if he continued to take his narcotic pain medication. Gillespie did not request a sentence modification prior to leaving the program.

(4)   After careful consideration of the parties' respective positions on appeal, we find no abuse of the Superior Court's discretion in denying Gillespie's motion for modification of sentence.[2]   Given Gillespie's extensive history of driving under the influence and his subsequent VOP, the Superior Court determined that the Key-Crest continuum of treatment provided Gillespie with the greatest opportunity for success. Gillespie's contention that he is unable to participate in the work release portion of the Crest Program because he is unable to function without narcotic pain medication is unsubstantiated on this record.[3] Under these circumstances,

---

[1] Gillespie does offer any explanation or evidence concerning his medical need for prescription pain medication.

[2] *Aiken v. State*, 2011 WL 4375252 (Del. Sept. 19, 2011).

[3] *See Batchelor v. State*, 2012 WL 403839 (Del. Feb. 8, 2012).

we find no abuse of the Superior Court's discretion in denying Gillespie's motion for sentence modification.

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

BY THE COURT:

/s/ Randy J. Holland
Justice