

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ARON McNATT,	§
	§ No. 68, 2013
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 0810007041
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 6, 2013
Decided: September 11, 2013

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 11th day of September 2013, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Aron McNatt, filed an appeal from the Superior Court’s January 25, 2013 violation of probation (“VOP”) sentencing order. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is manifest on the face of the opening brief that this appeal is without merit.¹ We agree and affirm.

¹ Supr. Ct. R. 25(a).

(2) The record before us reflects that, in 2008, McNatt was indicted on charges of Rape in the First Degree, Reckless Endangering in the First Degree and Assault in the Third Degree. In March 2009, McNatt pleaded guilty to Rape in the Third Degree. He was sentenced to 25 years of Level V incarceration, to be suspended after 3 years for 9 months of Level IV Work Release, to be followed by 2 years of Level III probation. In 2011, the Superior Court denied McNatt's first motion for postconviction relief.

(3) In November 2012, McNatt was found to have committed a VOP and was sentenced to 21 years and 6 months at Level V, to be suspended for 2 years of Level III probation. McNatt again was found to have committed a VOP on January 25, 2013. He was sentenced on that VOP to 21 years and 6 months at Level V, to be suspended after 5 years for 6 months at Level IV Work Release, to be followed by 2 years of Level III probation. This appeal followed.

(4) In this appeal, McNatt claims that a) his VOP sentence is excessive; and b) the Superior Court erred when it denied his request for a free transcript of the VOP hearing.

(5) McNatt's first claim is that his latest VOP sentence is excessive. Probation is an "act of grace."² In order to prove that a probationer has committed a VOP, the State need only prove by a preponderance of the evidence that the

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

probationer's conduct has not been as good as required by the conditions of his probation.³ In this case, McNatt's series of curfew violations were more than sufficient to support the Superior Court's finding of a VOP. Moreover, in sentencing a probationer for a VOP, the Superior Court is authorized to impose any Level V time remaining on the original Level V sentence.⁴ McNatt does not argue, nor does the record support an argument, that his VOP sentence exceeds the Level V time remaining on his original Level V sentence. As such, we conclude that McNatt's first claim is without merit.

(6) McNatt's second claim is that the Superior Court should have granted his request for a transcript of his VOP hearing at State expense. There is no legal authority requiring the Superior Court to furnish a probationer with a free transcript of a VOP hearing. Moreover, McNatt has provided no support for a claim that the Superior Court abused its discretion by denying his request. Contrary to McNatt's argument, there is no indication that the lack of a transcript has hampered his ability to present his claim of an excessive sentence in this appeal. However, if McNatt believed that the VOP hearing transcript was necessary to support his claim, he was responsible for providing this Court with the

³ Id.

⁴ *Pavulak v. State*, 880 A.2d 1044, 1045-46 (Del. 2005).

transcript.⁵ For all of the above reasons, we conclude that McNatt's second claim also is without merit.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁵ *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).