

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ERIC A. YOUNG,	§
	§ No. 594, 2013
Defendant Below,	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§
STATE OF DELAWARE,	§ Cr. ID 1008020524
	§
Plaintiff Below,	§
Appellee.	§

Submitted: December 20, 2013

Decided: February 6, 2014

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

ORDER

This 6th day of February 2014, upon consideration of the appellant’s opening brief, the State’s motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Eric Young, filed this appeal from his Superior Court sentence for a violation of probation (“VOP”). The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Young’s opening brief that his appeal is without merit. We agree and affirm.

(2) On May 17, 2011, Young pled guilty to one count each of Maintaining a Dwelling for Keeping Controlled Substances¹ and Conspiracy in the Second Degree.² The Superior Court immediately sentenced him on the Maintaining a Dwelling charge, effective August 25, 2010, to three years at Level V imprisonment, to be suspended after serving one year in prison for eighteen months at Level III probation. The Superior Court sentenced Young on the Conspiracy charge to two years at Level V incarceration, to be suspended entirely for probation.

(3) October 17, 2011, a VOP report was filed charging Young with failure to report to his probation officer after his release from incarceration. On November 16, 2011, the VOP warrant was withdrawn after authorities learned that Young could not report to his Delaware probation officer because he was incarcerated in the State of Maryland. In July 2012, Young was charged with another VOP after being arrested in Kent County, Delaware on new, drug-related criminal charges. A hearing on the VOP charge was postponed pending resolution of Young's new criminal charges. Young pled guilty to those charges in the Superior Court in Kent County in September 2013. Thereafter, the Superior Court in New Castle County held

¹ DEL. CODE ANN. tit. 16, § 4755(a)(5) (2003).

² DEL. CODE ANN. tit. 11, § 512 (2007).

Young's VOP hearing. The Superior Court found Young in violation and sentenced him to a total period of two years at Level V incarceration with no probation to follow. Young appeals from that sentence.

(4) Young raises four issues in his opening brief on appeal. First, he contends that the VOP proceeding failed to satisfy due process requirements. He next claims that the Superior Court erred in failing to provide him with a copy of the original sentencing order and VOP hearing transcript "as instructed by the Supreme Court." Third, he argues that the State of Delaware lacked jurisdiction to charge him with a VOP because he was under the supervision of the State of Maryland. Finally, he urges that the Superior Court erred in sentencing him without regard to his rehabilitative needs.

(5) We find no merit to any of these arguments. In Delaware, a defendant accused of a VOP is not entitled to a formal trial.³ Nonetheless, certain minimum requirements of due process must be satisfied.⁴ Those requirements are set forth in Superior Court Criminal Rule 32.1. Rule 32.1 provides that a defendant accused of a VOP is entitled to: (i) a bail hearing; (ii) written notice of the alleged violation; (iii) disclosure of the evidence

³ *Jenkins v. State*, 8 A.3d 1147, 1153 (Del. 2010).

⁴ *Id.* (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 786 (1973)).

against the defendant; (iv) an opportunity to appear and present evidence; (v) an opportunity to question adverse witnesses; and (vi) notice of the right to retain counsel.⁵

(6) Young has offered nothing to substantiate his claim of due process violations. The Superior Court docket reflects that the administrative warrant was issued on July 5, 2012 and that a bail hearing was held on July 19, 2012. Young was charged with, among other things, violating probation as a result of his arrest on new criminal charges. After Young pled guilty to those charges, the Superior Court held the VOP hearing and found sufficient evidence to adjudicate Young in violation of his prior probation. To the extent Young is arguing that an error occurred during the VOP hearing, we are unable to evaluate that contention. Despite his claims to the contrary, there is no evidence that Young ever filed a motion requesting the Superior Court to supply him with a copy of the VOP hearing transcript.⁶ As the Court has held many times, the failure to include adequate transcripts of the proceedings, as required by the rules of the Court,

⁵ DEL. SUPER. CT. CRIM. R. 32.1(a) (2013).

⁶ His assertion that this Court ordered the Superior Court to prepare the VOP hearing transcript is incorrect.

precludes appellate review of a defendant's claim of error in the proceedings below.⁷

(7) Nor do we find merit to Young's contention that the State of Delaware lacked jurisdiction to charge him with a VOP because he was under the supervision of the State of Maryland. Young was sentenced by the Superior Court in 2011 and was released from Level V custody to begin serving the probationary portion of his sentence. Before he ever reported to his probation officer in Delaware, Young was incarcerated on other criminal charges in Maryland. At the time he was released from custody in Maryland, Young remained under the jurisdiction of the State of Delaware because he had never completed serving his Delaware sentence. Young's suggestion that he could not be under the jurisdiction of the State of Delaware while he was also under the jurisdiction of the State of Maryland, is simply wrong.⁸

(8) Finally, with respect to his sentencing claim, the Superior Court was authorized to impose any period of incarceration up to and including the balance of the Level V time remaining to be served on Young's original sentence.⁹ In this case, Young had four years of Level V time remaining to

⁷ *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).

⁸ *See In re Alley*, 2010 WL 50501323 (Del. Dec. 8, 2010).

⁹ 11 Del. C. § 4334(c) (2007).

be served from his original sentence. The Superior Court sentenced Young on the VOP to two years at Level V incarceration, with no further probation to follow. This sentence was well within statutory limits, was not excessive, and in no way reflects a closed mind by the sentencing judge.¹⁰

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

¹⁰ See *Weston v. State*, 832 A.2d 742, 746 (Del. 2003).