

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARREN M. NELSON,	§	
	§	No. 657, 2013
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 1008004760
Appellee.	§	

Submitted: January 24, 2014

Decided: April 4, 2014

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

O R D E R

This 4th day of April 2014, it appears to the Court that:

(1) The appellant, Darren M. Nelson, has filed an appeal from his October 31, 2013 adjudication and sentencing in the Superior Court on a violation of probation (“VOP”). The appellee, State of Delaware, has filed a motion to affirm on the ground that it is manifest on the face of Nelson’s opening brief that the appeal is without merit.¹ Having carefully considered the parties’ positions on appeal and the available record, we agree with the State’s position and affirm the Superior Court judgment.

¹ Del. Supr. Ct. R. 25(a).

(2) It appears from the record that Nelson pled guilty on November 5, 2010 to Rape in the Fourth Degree and Endangering the Welfare of a Child and was sentenced to a total of ten years and six months at Level V suspended after six months for five years at Level III probation. As part of the sentence, Nelson was ordered to undergo a mental health evaluation and thereafter comply with recommended counseling and treatment, and to complete a sexual disorders counseling treatment program.

(3) In late April 2013, Nelson was discharged from the sexual offender treatment for failing to attend required group therapy meetings. In early May 2013, Nelson was arrested for theft. On May 16, 2013, Nelson was charged with VOP. At a hearing on September 9, 2013, the Superior Court adjudged Nelson guilty of VOP and sentenced him to ten years at Level V suspended for five years at Level III with zero tolerance conditions for missed appointments and further violations.

(4) Two weeks later, on September 20, 2013, Nelson was again charged with VOP after he allegedly tested positive for controlled substances. At a hearing on October 31, 2013, the Superior Court adjudged Nelson guilty of VOP and sentenced him to nine years and six months at Level V suspended after successful completion of the Level V Key and

Level IV residential substance abuse treatment programs for five years at Level III aftercare. This appeal followed.

(5) On appeal, Nelson alleges that the Superior Court “relied upon impermissible and false evidence” when adjudging him guilty of VOP, and that the court had a “closed mind” when imposing the sentence. Nelson also contends that the sentence was “overly harsh,” and that his defense counsel provided ineffective representation.

(6) Nelson’s claim that the October 31, 2013 VOP sentence was “overly harsh” is without merit. “[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 including any portion of a previously suspended prison term.³ In this case, the October 31, 2013 VOP sentence did not exceed the balance of the Level V time that was originally imposed on November 5, 2010.

(7) The Court is unable to review the balance of Nelson’s claims. As the appealing party, Nelson was required to, but did not, order transcript for the appeal.⁴ In the absence of a transcript of the October 31, 2013 VOP hearing, we are lacking the necessary record to evaluate Nelson’s claims that

² *State v. Sloman*, 886 A.2d 1257, 1260 (Del. 2005) (citing 11 Del. C. § 4334(c)).

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

⁴ *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).

his defense counsel was ineffective, that the Superior Court adjudged him guilty of VOP on the basis of “impermissible and false evidence,” and that the court sentenced him with a “closed mind.” The available record, which includes a lab report attached to the September 20 VOP report, reflects that the Superior Court did not abuse its discretion in revoking Nelson’s probation on the basis that he ingested controlled substances, including heroin, during the probation period.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice