IN THE SUPREME COURT OF THE STATE OF DELAWARE

DANIEL PASKINS, §

§

Defendant Below- § No. 479, 2012

Appellant,

§

v. § Court Below—Superior Court

§ of the State of Delaware,

STATE OF DELAWARE, § in and for Sussex County

§ Cr. ID Nos. 88S01362DI

Plaintiff Below- § and 9312006327

Appellee. §

Submitted: October 12, 2012 Decided: November 27, 2012

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

ORDER

This 27th day of November 2012, 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, Daniel Paskins, filed this appeal from the Superior Court's violation of probation (VOP) sentencing order. The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Paskins' opening brief that the appeal is without merit. We agree and affirm.
- (2) The record reflects that Paskins pled guilty in October 1988 to one count of Robbery in the First Degree and one count of Burglary in the First

Degree. The Superior Court sentenced him to a total period of twenty years at Level V incarceration to be suspended after serving four and one-half years in prison for a ten year period of probation. In January 1994, Paskins was convicted by a Superior Court jury of four counts of Robbery in the First Degree and one count of Possession of a Deadly Weapon During the Commission of a Felony. The Superior Court sentenced him to a total period of thirty-three years at Level V incarceration to be suspended after serving twenty-five years for probation. This Court affirmed his convictions and sentence on direct appeal.¹

(3) In November 2010, Paskins filed a motion for sentence reduction or modification, which the State opposed. The Superior Court held a hearing on Paskins' motion on December 22, 2010. At the hearing, the Superior Court indicated that it would grant Paskins' motion but stated that the modified sentencing order would not be issued until the Superior Court had the opportunity to consider all of Paskins' sentences and account for all of the time he previously served on each. On January 19, 2011, the Superior Court issued its modified sentencing order, which suspended all of the remaining Level V time of Paskins' sentences and imposed a one year period at Level IV home confinement followed by a four-year concurrent period at Level III probation.

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¹ Paskins v. State, 1995 WL 120665 (Del. Mar. 15, 1995).

- (4) Thereafter, on July 15, 2012, Paskins was arrested and charged with Driving Under the Influence of Alcohol. As a result of this arrest, Paskins also was charged with violating his probation. After a contested VOP hearing on August 10, 2012, the Superior Court found Paskins had violated his probation and sentenced him immediately to a total period of thirty-one years at Level V incarceration to be suspended entirely for one year at Level IV home confinement followed by a lengthy period of probation. Paskins now appeals.
- (5) In his opening brief on appeal, Paskins asserts that the Superior Court erred in finding him in violation of the terms of his probation because he already had completed his modified sentence at the time he was charged with DUI in 2012. This claim is based on Paskins' mistaken belief that the Superior Court had modified his sentence by requiring him only to serve one year at Level IV home confinement with no probation to follow. This contention, however, is completely unsupported by the record, which reflects that the Superior Court's modified sentence included a four-year term of probation. Therefore, we reject Paskins' first claim on appeal.
- (6) Paskins also contends that his VOP sentence is illegal because the Superior Court imposed an eight and a half year period of probation, which exceeds the two-year probationary term limit set forth in 11 Del. C. § 4333(b)(1). We find no merit to this claim, however, because the probationary term limits set

forth in Section 4333(b) do not apply retroactively to any original sentence imposed prior to 2003.² Paskins originally was sentenced in 1989 and 1994, respectively. The limits of Section 4333(b), thus, do not apply in his case. We conclude that the Superior Court's 2012 VOP sentence was neither excessive nor illegal.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

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² Nyala v. State, 955 A.2d 1275, 1276 (Del. 2008).