

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL A. MORGAN,	§	
	§	No. 402, 2012
Defendant-Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	Cr. ID No. 1108009569
	§	
Plaintiff-Below,	§	
Appellee.	§	

Submitted: September 20, 2012  
Decided: December 17, 2012

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

**ORDER**

This 17<sup>th</sup> day of December 2012, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm, it appears to the Court that:

(1) On March 21, 2012, the appellant, Michael A. Morgan, pled guilty in Sussex County Superior Court to Theft of a Firearm and Possession of a Firearm by a Person Prohibited. Morgan was sentenced to eight years of Level V incarceration, suspended for the Level III Gateway drug rehabilitation program.

(2) On March 27, 2012 Morgan was discharged from the Gateway program for alleged bad behavior. Morgan was later charged by administrative warrant in the Sussex County Superior Court with a violation of probation (“VOP”).

Following a hearing on April 20, 2012, the Superior Court found Morgan guilty of VOP but deferred sentencing until May 24, 2012. The Superior Court ordered that:

[Morgan] shall be evaluated for determination as to whether he meets the criteria for entry in the Court's Mental Health Court program.

\* \* \*

[I]f [Morgan] does meet the criteria and is entered in the program, an order for change of venue will be entered to transfer this case to New Castle County Superior Court for participation in that Mental Health Court program, as [Morgan] is a resident of New Castle County.

(3) On May 24, 2012, the Superior Court sentenced Morgan to a total of eight years of incarceration with credit for time served, suspended for probation conditioned on Morgan's participation in the Mental Health Court Program. On May 25, 2012, the Superior Court issued a change of venue order transferring the case to the New Castle County Superior Court "for all future events," after determining that Morgan's "community support system and housing are in New Castle County," and that "the New Castle County Superior Court Mental Health Court Program would be more appropriate." Morgan did not appeal.

(4) By administrative warrant filed on June 5, 2012 in the New Castle County Superior Court, Morgan was alleged to have tested positive for opiates in violation of the zero tolerance condition of his May 24, 2012 sentence. At a VOP hearing held on June 21, 2012, the Superior Court adjudged Morgan guilty of VOP. The court sentenced Morgan to a total of eight years at Level V with credit

for time served, suspended after successful completion of the Level V Key and Level IV Crest Programs for Level III Crest Aftercare. This appeal followed.

(5) On appeal, Morgan claims that he was “violated for a dirty urine without penological justification.” This Court cannot address Morgan’s claim without reviewing a transcript of the June 21, 2012 VOP hearing. Morgan, however, did not provide the Court with that transcript, which he was required to do as the appealing party.<sup>1</sup> In the absence of the necessary transcript, Morgan’s claim is not subject to appellate review.

(6) Morgan claims that the June 21, 2012 VOP hearing should have been held in the Superior Court in Sussex County rather than in New Castle County. Having reviewed the May 25, 2012 Superior Court change of venue order, we can discern no support for Morgan’s claim that the VOP should not have proceeded in New Castle County.

(7) After adjudging a defendant guilty of VOP, the Superior Court has the authority to sentence the defendant to any period of incarceration up to and including the balance of incarceration remaining on the original sentence.<sup>2</sup> In this case, after finding Morgan guilty of VOP, the Superior Court sentenced Morgan to a total of eight years at Level V with credit for time served, suspended after the

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<sup>1</sup> *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).

<sup>2</sup> *See* DEL. CODE ANN. tit. 11, § 4334(c) (2007).

successful completion of Levels V and IV substance abuse treatment programs. The Court concludes that Morgan's claims of error associated with his VOP conviction and sentencing are not supported by the record and, for that reason, are without merit.

(8) The appellee, the State of Delaware, also moves to affirm on the ground that it is manifest on the face of Morgan's opening brief that his appeal is without merit. 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.

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

BY THE COURT:

/s/ Jack B. Jacobs  
Justice