IN THE SUPREME COURT OF THE STATE OF DELAWARE

DETLEF F. HARTMANN,	§
	§ No. 220, 2012
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 9912000027
	§
Plaintiff Below-	§
Appellee.	§

Submitted: December 28, 2012 Decided: February 4, 2013

Before STEELE, Chief Justice, HOLLAND and JACOBS, Justices

ORDER

This 4th day of February 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, Detlef F. Hartmann, filed an appeal from the Superior Court's April 10, 2012 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.

- (2) The record before us reflects that, in December 1999, Hartmann was arrested and charged with multiple sexual offenses. In March 2001, he pleaded guilty to Unlawful Sexual Intercourse in the Second Degree and 2 counts of Unlawful Sexual Contact. The remaining charges were dismissed. Hartmann was sentenced to a total of 19 years of Level V incarceration, to be suspended after 10 years for decreasing levels of supervision. He also was classified as a Tier III sex offender. Among other things, Hartmann was prohibited from having access to the Internet.
- (3) While serving his Level III probation in May 2011, Hartmann was cited with violating two conditions of his probation, specifically, possessing two deadly weapons (specifically, a machete found under his bed and a spring-loaded pocket knife found in his pocket) and possessing a computer with Internet access. The items had been found during an administrative search of Hartmann's Sussex County residence by Probation and Parole. An administrative warrant for his arrest was issued and a VOP hearing on the violations took place on April 10, 2012. Hartmann was found to have committed a VOP and was re-sentenced to a total of 4 years at Level

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¹ Supr. Ct. R. 25(a).

V, to be followed by Level III probation. Among other things, the computer and electronic equipment seized from Hartmann's residence was ordered to be turned over to the Department of Correction.²

- (4) In this appeal from the Superior Court's April 10, 2012 VOP sentencing order, Hartmann claims that a) he was the subject of an illegal search and seizure; b) the Superior Court erred in denying him a copy of the VOP hearing at State expense; c) he was improperly forced to forfeit his computer and electronic equipment; and d) he received ineffective assistance of counsel at the VOP hearing.
- (5) Hartmann's first claim is that he was the subject of an illegal search and seizure. The record before us does not reflect that the claim was ever raised in the Superior Court in the first instance.³ As such, it is not properly before us in this proceeding.⁴ Even assuming that the claim is properly before us, it has no merit. As a condition of probation, a probationer such as Hartmann is required to submit to reasonable administrative searches of his residence in order to ensure compliance with

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² The VOP sentencing order was modified on April 13, 2012 to provide that the equipment seized from Hartmann's residence would be turned over to the Department of Correction "for use by the Sex Offender Monitoring Unit."

³ Hartmann has failed to provide the Court with a copy of the transcript of the VOP hearing. *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).

⁴ Supr. Ct. R. 8.

the conditions of his probation.⁵ While Hartmann alleges that the probation officer who did an administrative search of his residence did so without following proper procedures, his allegations are conclusory and without any record support. For all of the above reasons, we conclude that Hartmann's first claim is without merit.

Hartmann's second claim is that the Superior Court abused its (6) discretion when it declined to provide him with a free copy of his VOP hearing transcript. The Superior Court has discretion to determine whether a request for a free transcript will be granted.⁶ The VOP report in this case reflects that Hartmann had \$547 in cash on his person when he was arrested on May 13, 2011. The VOP report also reflects that Hartmann owes a total of \$986 in court costs and fees, which he has refused to pay. Moreover, as stated by the Superior Court in its order denying a free transcript, Hartmann failed to demonstrate a particularized need for the transcript. Under those circumstances, we find that the Superior Court acted within its discretion when it denied Hartmann's request for a free copy of his VOP hearing transcript. We, therefore, conclude that Hartmann's second claim is without merit.

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⁶ Super. Ct. Crim. R. 61(d) (3).

⁵ Del. Code Ann. tit. 11, §4321(d); *Donald v. State*, 903 A.2d 315, 318 (Del. 2006).

- (7) Hartmann's third claim is that he was improperly forced to forfeit his computer and electronic equipment. Assuming that this claim is properly before us,⁷ we conclude that it has no merit. As a condition of his probation, Hartmann, a Tier III sex offender, was prohibited from having access to the Internet, a condition of which Hartmann was well aware.⁸ Once it was found that Hartmann had violated his probation by possessing equipment that would afford him access to the Internet, it was within the Superior Court's authority to require Hartmann to forfeit that equipment in order to ensure the safety of the public.⁹ We, therefore, conclude that Hartmann's third claim also is without merit.
- (8) Hartmann's fourth, and final, claim is that his counsel provided ineffective assistance in connection with his VOP hearing. It is well-settled that a defendant may not pursue an ineffective assistance of counsel claim in the first instance on direct appeal. We, therefore, will not consider Hartmann's ineffective assistance of counsel claim in this appeal.

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⁷ Supr. Ct. R. 8.

⁸ On appeal from the Superior Court's previous denial of Hartmann's motion to remove that condition, this Court, citing Del. Code Ann. tit. 11, §4204(m), ruled that the condition was within the Superior Court's discretion to impose in order to ensure the safety of the public. *Hartmann v. State*, No. 4, 2011, Steele, C.J. (Apr. 19, 2011).

⁹ *DiSabatino v. Salicete*, 681 A.2d 1062, 1066 (Del. 1996); *Cebenka v. Upjohn Co.*, 559

A.2d 1219, 1224-25 (Del. 1989) ("Superior Court has inherent power to enforce its own orders which are issued pursuant to valid authority").

¹⁰ Johnson v. State, 962 A.2d 233, 234 (Del. 2008).

(9) 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/ Myron T. Steele Chief Justice