IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| SHAWN BROWN, | § | |
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| Defendant Below-Appellant, | § | No. 703, 2010 |
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| | § | |
| v. | § | Court Below—Superior Court |
| | § | of the State of Delaware, |
| STATE OF DELAWARE, | § | in and for New Castle County |
| | § | Cr. ID Nos. 0609017048, |
| Plaintiff Below-Appellee. | § | 0604016262, 0607001562, |
| | § | and 0607005639 |

Submitted: December 21, 2010
Decided: January 25, 2011

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

**O R D E R**

This 25th day of January 2011, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The defendant-appellant, Shawn Brown, filed this appeal from the Superior Court's sentence for his second 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 Brown's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Brown pled guilty in January 2007 to four criminal offenses charged under four different indictments. The Superior Court immediately sentenced Brown as follows: (i) trafficking in cocaine—

six years at Level V incarceration, to be suspended after serving three years for three years at Level IV work release, in turn, to be suspended after serving six months for eighteen months at Level III probation; (ii) second degree robbery—two years at Level V incarceration to be suspended for two years at Level III probation; (iii) receiving stolen property—two years at Level V incarceration to be suspended for one year at Level III probation; and (iv) first degree criminal trespass—one year at Level V incarceration to be suspended for one year at Level III probation. Thus, effective January 12, 2007, Brown was sentenced to a total period of eleven years at Level V incarceration, to be suspended after serving three years in prison at decreasing levels of supervision.

(3) On February 19, 2010, the Superior Court found Brown in violation of the terms of his probation. The Superior Court sentenced him on all four charges to a total period of eight years at Level V incarceration (which was the Level V time remaining on Brown's original sentence), to be suspended after serving five months for eighteen months at Level III probation. On September 6, 2010, Brown was arrested on new criminal charges and indicted for trafficking in cocaine, possession with intent to deliver cocaine, and maintaining a vehicle for keeping controlled substances. As a result of these new charges, the Superior Court found Brown guilty of

his second VOP and sentenced him on October 27, 2010 to a total period of three years at Level V incarceration with no probation to follow. Brown appeals from that sentencing order. He argues that the Superior Court erred in imposing a sentence greater than that recommended by the SENTAC guidelines. He also contends that the prosecutor and the judge were both biased against him.

(4) This Court's appellate review of a sentence is extremely limited. Our review generally ends upon a determination that the sentence is within the statutory limits prescribed by the legislature.[1] In sentencing a defendant for a VOP, the trial court is authorized to impose any period of incarceration up to and including the balance of the Level V time remaining to be served on the original sentence.[2] In this case, following Brown's first VOP sentence, there were seven years and seven months from Brown's original sentence that the Superior Court could have reimposed after finding Brown guilty of his second VOP. Thus, the three-year sentenced imposed by the Superior Court was authorized by law and was neither arbitrary nor excessive.

(5) Furthermore, because Brown has failed to provide this Court with a copy of the transcript from his VOP hearing,[3] we can find nothing in

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[1] *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).
[2] 11 Del. C. § 4334(c).
[3] *See Hawkins v. State*, 2010 WL 3341578 (Del. Aug. 25, 2010) (holding that failure to provide transcript of VOP hearing precludes review of argument on appeal).

the record to support his allegation of bias. The gist of his allegation is that the prosecutor's decision to try him on the VOP before he was tried on his new criminal charges was evidence of the prosecutor's bias. Moreover, he argues that the judge's sentence in excess of the SENTAC guidelines is evidence of the judge's bias. As we have already held, however, Brown's second VOP sentence was authorized by law and was neither arbitrary nor excessive. No facts of Record concerning Brown's sentence support his allegation of judicial bias. Similarly, the prosecutor's decision to try Brown on the VOP before his new criminal charges were resolved was not improper[4] and is not evidence of bias.

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

BY THE COURT:

/s/ Carolyn Berger
Justice

[4] *See, e.g., id.*