IN THE SUPREME COURT OF THE STATE OF DELAWARE

MATTHEW CELLI,	§	
	§	
Defendant Below-Appellant,	§	No. 7, 2013
	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware,
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr. ID 1206004517
Plaintiff Below-Appellee.	§	
	§	

Submitted: June 7, 2013
Decided: June 28, 2013

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

O R D E R

This 28th day of June 2013, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Matthew Celli, filed this appeal from his sentencing following the Superior Court's finding that he had violated the terms of his probation. After careful consideration, we find no merit to most of the arguments Celli raises on appeal. Nonetheless, it appears that the Superior Court did not properly credit Celli with all of the time he previously served at Level V incarceration. Accordingly, while we affirm the Superior Court's VOP finding and sentence, we remand with instructions for the Superior Court to correct Celli's sentence to properly credit him with time previously served.

(2) The record reflects that Celli pled guilty on October 1, 2012 to one count of Possession of Shoplifting Tools, a felony, and one count of Shoplifting, a misdeameanor. The Superior Court immediately sentenced him, effective June 29, 2012, to a total period of four years at Level 5 incarceration, to be suspended immediately for eighteen months at Level III probation. He was released from custody on October 2, 2012. In November 2012, he was charged with violating probation, among other reasons, for testing positive for drug use and for failing to report to his probation officer. On December 14, 2012, the Superior Court found Celli in violation of the terms of his probation and sentenced him, effective November 29, 2012, to a total period of four years at Level V incarceration, to be suspended upon successful completion of the Key Program for two years at Level IV (Crest), to be suspended upon successful completion of the Crest Program for eighteen months at Level III probation. This appeal followed.

(3) In his opening brief on appeal, Celli does not challenge the Superior Court's finding that he violated the terms of his probation. Instead, Celli contends that the Superior Court abused its discretion by sentencing him to prison time and the Key Program for his first violation of probation. Celli also asserts that the Superior Court did not properly credit him with all time previously served at Level V.

(4) We find no merit to Celli's first argument. In Delaware, once a violation of probation is established, the sentencing court has discretion to require the probationer to serve the original sentence imposed or any lesser sentence.[1] If the sentence is within statutory limits, the sentence will not be disturbed on appeal unless the defendant can establish that the sentencing judge relied on impermissible factors or exhibited a closed mind.[2] In this case, Celli's original sentence was suspended entirely. There is nothing in the record to reflect that the sentencing judge at the VOP hearing relied on impermissible factors or exhibited a closed mind in sentencing Celli. Accordingly, we find no error or abuse in the Superior Court's decision to reimpose the entire unserved balanced of Celli's original sentence to be suspended upon completion of the Key Program. To the extent Celli complains that the Key Program is not the right program for him, a defendant has no right to be sentenced to a particular rehabilitation program.[3] Thus, we reject Celli's first argument on appeal.

(5) With respect to Celli's contention that the Superior Court's VOP sentence failed to credit him with all time previously served at Level V, we conclude that this matter must be remanded to the Superior Court for a determination of that issue. A defendant is entitled to Level V credit for all time

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[1] *State v. Sloman*, 886 A.2d 1257, 1260 (Del. 2005) (*citing* DEL. CODE ANN. tit. 11, § 4334(c)).
[2] *Weston v. State*, 832 A.2d 742, 746 (Del. 2003).
[3] *Deshields v. State*, 2012 WL 1072298 (Mar. 30, 2012).

served at Level V incarceration.[4] In this case, it does not appear that Celli received credit for all time he was held awaiting adjudication of his original charges. While some of the time may be attributable to another sentence he was serving, for which he would not be entitled to credit, the State concedes that Celli is entitled to at least some credit toward his current sentence. Accordingly, this matter must be remanded to the Superior Court for the issuance of a new sentencing order that gives Celli credit for any time he previously spent at Level V on his current sentence.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court's VOP adjudication and sentence is AFFIRMED. The matter is REMANDED to the Superior Court, however, to enter a modified sentencing order crediting Celli with all time previously served at Level V. Jurisdiction is not retained.

BY THE COURT:

/s/ Carolyn Berger
Justice

[4] DEL. CODE ANN. tit. 11, § 3901(b) (2007).