

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PARIS L. WATERS,	§	
	§	No. 480, 2013
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	
	§	Cr. ID Nos. 0705019531
Plaintiff Below,	§	0705011905
Appellee.	§	

Submitted: December 23, 2013
Decided: February 21, 2014

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

ORDER

This 21st day of February 2014, upon consideration of the opening brief filed by the appellant and the motion to affirm filed by the appellee, it appears to the Court that:

(1) The appellant, Paris L. Waters, appeals from the sentence imposed on August 21, 2013 after Waters’ violation of probation hearing and conviction on June 26, 2013 in the Superior Court. The appellee, State of Delaware, has moved to affirm the Superior Court judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and affirm.

(2) The record before us reflects that in November 2007, Waters pled guilty to Assault in the Second Degree and Offensive Touching and was sentenced to a total of seven years at Level V, suspended after two years for decreasing levels of supervision. In July 2009, Waters pled guilty to Rape in the Fourth Degree and was sentenced to fifteen years at Level V, suspended for twelve months of Level III probation.

(3) On June 5, 2013, Waters was charged by administrative warrant with his sixth violation of probation (VOP). Following a contested hearing on June 26, 2013, Waters was adjudged guilty of VOP. At the conclusion of the hearing, the Department of Correction was ordered to conduct a mental health evaluation and to prepare a report, which was filed on July 11, 2013.

(4) On August 21, 2013, the Superior Court sentenced Waters, on the fourth degree rape conviction, to thirteen years at Level V suspended after successful completion of sex offender treatment (estimated to be about eighteen months) for Level IV supervision. The Superior Court noted that when Waters completes the Level V sex offender treatment and moves to Level IV, the Superior Court will modify the sentence at that time to address Waters' supervision and treatment needs. The court also advised Waters that he was "free to file a motion on [his] own behalf suggesting an

alternative.”¹ On the offensive touching conviction, the Superior Court reimposed one year at Level V, suspended for one year at Level I restitution only. This appeal followed.

(5) On appeal, Waters claims that he should not have been found guilty of not satisfactorily participating in sex offender treatment when a violation of that specific condition was not charged in the administrative warrant. Because a due process violation was not raised at the VOP hearing, this Court reviews that claim for plain error.² Under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.³

(6) The hearing transcript does not reflect any error that jeopardized the fairness and integrity of the VOP hearing. Specifically, there is no indication that Waters or his counsel were unaware of the alleged violations or that they were unprepared to address them. Accordingly, Waters’ claim of a due process violation is without merit.

¹ Hearing Tr. at 15-16 (Aug. 21, 2013).

² See *Bungy v. State*, 2013 WL 5745871, at *2 (Del. Oct. 21, 2013) (citing *Kurzmann v. State*, 903 A.2d 702, 709, 719 (Del. 2006)).

³ *Id.* (citing *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986)).

(7) Waters next contends that he should have been sentenced by the Superior Court judge who oversees the Mental Health Court. That claim lacks merit. A probationer is entitled to a “prompt hearing before a judge of Superior Court on the charge of violation.”⁴ A probationer is not entitled to a hearing before a specific judge.⁵

(8) Waters also claims that his VOP defense counsel was ineffective. Nonetheless, that claim is not appropriately raised for the first time on direct appeal, and the Court has not considered it.⁶

(9) Finally, Waters appears to claim that the sentence imposed on August 21, 2013 did not properly account for time that he served at Level V and at the VOP Center. There is no evidence in the record to support Waters’ claim. The hearing transcript reflects that the Superior Court accounted for time-served when sentencing Waters on August 21, 2013.⁷

⁴ DEL. SUPER. CT. CRIM. R. 32.1(a).

⁵ See *Mason v. State*, 2012 WL 1067152, at *1 (Del. Super. Ct. Mar. 27, 2012) (collecting cases).

⁶ *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

⁷ Hearing Tr. at 16 (Aug. 21, 2013).

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/ Jack B. Jacobs
Justice