

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS K. ALLGAUER,	§	
	§	No. 531, 2013
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 1212005231
Appellee.	§	

Submitted: January 17, 2014
Decided: March 13, 2014

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

O R D E R

This 13th day of March 2014, upon consideration of the parties' briefs on appeal and the Superior Court record, it appears to the Court that:

(1) On May 8, 2013, the appellant, Thomas K. Allgauer pled guilty to Criminal Trespass in the First Degree, a class A misdemeanor that is punishable by a sentence of up to one year at Level V incarceration.¹ By corrected sentence order filed on May 16, 2013, the Superior Court sentenced Allgauer, effective March 19, 2013, to one year at Level V incarceration suspended after fifty-one days for one

¹ Del. Code Ann. tit. 11, §§ 823, 4206(a) (2010).

year of Level III probation (hereinafter “original sentence”). Allgauer did not appeal the original sentence.

(2) In July 2013, Allgauer was charged with violation of probation (“VOP”). At a September 10, 2013 hearing, the Superior Court adjudged Allgauer guilty of VOP and sentenced him to five months at Level V suspended after two months for one year of Level III probation (hereinafter “VOP sentence”). This appeal followed.

(3) On appeal, Allgauer first claims that the original sentence exceeded SENTAC guidelines. The claim is procedurally improper in this appeal, which is limited to review of the VOP sentence, and is also without merit. A judge’s deviation from the nonbinding SENTAC guidelines does not support a claim that a sentence is illegal.²

(4) Allgauer next contends that the VOP sentence violates title 11, section 3901(c) of the Delaware Code.³ The claim is without merit. Section 3901(c) of the Delaware Code requires that a person be credited with any time actually incarcerated at Level V. Allgauer does not articulate, and the record does not support, a factual basis upon which to conclude that the VOP sentence did not provide credit for all time Allgauer spent incarcerated at Level V.

² *Mayes v. State*, 604 A.2d 839, 845 (Del. 1992).

³ Del. Code Ann. tit.11, § 3901(c).

(5) Allgauer also contends that the VOP sentence was imposed in violation of our decision in *Pavulak v. State*, where we held that the Superior Court could not impose Level V incarceration in excess of the balance of the suspended sentence then in effect.⁴ In this case, the VOP sentence did not impose Level V incarceration in excess of the suspended sentence then in effect. Allgauer’s claim is without merit.

(6) Finally, to the extent Allgauer claims that the VOP sentence imposed an excessive period of probation, that claim is also without merit. The period of probation imposed in the VOP sentence did not exceed the one year maximum provided under title 11, section 4333(f) of the Delaware Code.⁵

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁴ *Pavulak v. State*, 880 A.2d 1044, 1046 (Del. 2005).

⁵ See Del. Code Ann. tit. 11, § 4333(f) (Supp. 2014) (providing that “in no event shall the total period of probation . . . exceed the maximum term of commitment provided by law for the offense or 1 year, which is greater”).