

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FREDERICK S. DEJOHN, II	§
	§ No. 427, 2013
Defendant Below,	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§
STATE OF DELAWARE,	§ Cr. ID 0107018127
	§
Plaintiff Below,	§
Appellee.	§

Submitted: April 4, 2014  
Decided: May 30, 2014

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

**ORDER**

This 30<sup>th</sup> day of May 2014, after consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Frederick DeJohn, filed this appeal from his resentencing following this Court's order reversing the Superior Court's sentence for DeJohn's second violation of probation ("VOP"). We find no merit to the issues DeJohn raises on appeal. Accordingly, we affirm the Superior Court judgment.

(2) The record reflects DeJohn pled guilty in June 2002 to two counts of unlawfully dealing in child pornography. On his first conviction, the Superior Court sentenced DeJohn to eight years at Level V incarceration,

to be suspended after three years for one year at a Level IV Halfway House, followed by four years at Level III probation. On the second conviction, DeJohn was sentenced to seven years at Level V incarceration to be suspended after three years for a four year consecutive term at Level III probation. On April 30, 2010, DeJohn was found in violation of the terms of his probation. The Superior Court sentenced him to a total period of ten years at Level V incarceration<sup>1</sup> (with credit for 23 days served), which was suspended entirely for lower levels of supervision.

(3) On December 2, 2011, DeJohn was found guilty of a second VOP. The Superior Court sentenced him on the first charge, effective November 14, 2011, to four years and six months at Level V incarceration with no probation to follow. On the second charge, the Superior Court sentenced DeJohn to five years at Level V incarceration, to be suspended after serving three years in prison for two years at Level III probation. On appeal, this Court remanded for resentencing.<sup>2</sup> On remand, the Superior Court resentenced DeJohn on the first charge to four years and six months at Level V incarceration with no probation to follow. As to the second charge,

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<sup>1</sup> This first VOP sentence, which imposed a total ten-year term, was erroneous because DeJohn had only nine years remaining on his original sentence. Because the entire sentence was suspended, however, DeJohn did not suffer any prejudice from this error.

<sup>2</sup> *DeJohn v. State*, 60 A.3d 1089 (Del. 2013).

the Superior Court sentenced DeJohn to four years at Level V incarceration, to be suspended after serving three years in prison for one year at Level III probation. This appeal followed.

(4) Although DeJohn enumerates five arguments in his opening brief on appeal, he essentially raises four claims. First, he argues that the sentencing judge was biased and sentenced him with a closed mind. Next, he asserts that his court-appointed attorney provided ineffective assistance of counsel. Third, he claims that the Superior Court violated his rights by denying his request for transcripts. Finally, he argues that his sentence is illegal.

(5) With respect to DeJohn's claim challenging the Superior Court's denial of his request for transcripts, we find no need to address this issue because the State, in fact, ordered preparation of the transcript, which was then provided to DeJohn. As for DeJohn's claim that his appointed counsel at the VOP hearing was ineffective, this Court will not consider that claim for the first time on this direct appeal.<sup>3</sup>

(6) Furthermore, we find no merit to any of DeJohn's sentencing claims. Any claims that DeJohn had against the judge who initially sentenced him were rendered moot when this Court remanded the matter to

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<sup>3</sup> *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

the Superior Court for resentencing before a different judge. On remand, the sentencing judge acknowledged the evidence presented by DeJohn in support of his request for leniency in sentencing. Nonetheless, the judge articulated specific reasons—namely, the seriousness of his original offense, the “sneakiness” of his violation (which involved hiding a child in his bathroom), and the importance of protecting young children—for sentencing DeJohn to seven and one-half years at Level V incarceration, followed by one year at Level III probation.

(7) On appeal, our review of a sentence generally is limited to a determination of whether the sentence is within statutory limits.<sup>4</sup> We also will review a sentence to ensure that it is not based on factual predicates that are false or unreliable and to ensure that the sentence is not the product of the sentencing judge’s bias or closed mind.<sup>5</sup> The Superior Court was authorized to reimpose the time remaining to be served from DeJohn’s original sentence, which was almost nine years.<sup>6</sup> The Superior Court, however, sentenced DeJohn to eight and one-half years at Level V incarceration, to be suspended after serving seven and one-half years in

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<sup>4</sup> *Cruz v. State*, 990 A.2d 409, 416 (Del. 2010).

<sup>5</sup> *Id.*

<sup>6</sup> *State v. Sloman*, 886 A.2d 1257, 1260 (Del. 2005).

prison for one year at Level III probation. The sentence is legal on its face, and we find no evidence to support DeJohn's contention that the sentence was the result of bias or a closed mind.

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

BY THE COURT:

/s/ Jack B. Jacobs  
Justice