

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BLAZEJ K. POWEL,	§
	§ No. 336, 2023
Defendant Below,	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware
v.	§
	§ Cr. ID Nos. 2103007545,
STATE OF DELAWARE,	§ 2105015489, 210710519 (K)
	§
Appellee.	§

Submitted: December 18, 2023

Decided: February 20, 2024

Before **TRAYNOR, LEGROW, and GRIFFITHS**, Justices.

ORDER

Upon consideration of the opening brief, motion to affirm, and record on appeal, it appears to the Court that:

(1) The appellant, Blazej K. Powel, filed this appeal from a Superior Court order sentencing him for his second violation of probation (“VOP”). The State of Delaware moved to affirm the judgment below on the basis that it is manifest on the face of Powel’s opening brief that his appeal is without merit. We agree and affirm.

(2) In February 2022, Powel resolved three criminal cases by pleading guilty to strangulation in Cr. ID No. 2103007545, noncompliance with bond in Cr. ID No. 2105015489, and noncompliance with bond in Cr. ID No. 2107010519.

The charges arose from Powel assaulting his ex-girlfriend and contacting her in violation of no-contact orders. In the plea agreement, the parties agreed that Powel would be subject to monitoring and a substance abuse evaluation by the Treatment Access Center (“TASC”). The Superior Court immediately sentenced Powel as follows: (i) for noncompliance with bond in Cr. ID No. 2107010519, effective September 13, 2021, five years of Level V incarceration, suspended for eighteen months of probation with GPS monitoring; (ii) for noncompliance with bond in Cr. ID No. 2105015489, five years of Level V incarceration, suspended for eighteen months of probation with GPS monitoring; and (iii) for strangulation, five years of Level V incarceration, suspended after 194 days for eighteen months of probation with GPS monitoring. The Superior Court also ordered TASC to evaluate and monitor Powel. Powel did not appeal the Superior Court’s judgment.

(3) In June 2022, the Department of Correction (“DOC”) requested a change of venue from New Castle County to Kent County because Powel was residing at a treatment house in Dover and had found work in the area. The Superior Court transferred Powel’s case to Kent County.

(4) In July 2022, DOC filed an administrative warrant for Powel. In August 2022, DOC filed a violation of probation report alleging that Powel had incurred new criminal charges—including driving under the influence and third-degree assault—and violated the no-contact order with his ex-girlfriend. A hearing

on the alleged violation was scheduled for August 9, 2022, but was continued twice at Powel's request.

(5) After a hearing on April 14, 2023, the Superior Court found Powel in violation of his probation. The Superior Court sentenced Powel as follows: (i) for noncompliance with bond in Cr. ID No. 2107010519, effective July 23, 2022, five years of Level V incarceration, suspended immediately for one year of probation with GPS monitoring; (ii) for noncompliance with bond in Cr. ID No. 2105015489, five years of Level V incarceration, suspended for one year of probation with GPS monitoring; and (iii) for strangulation, four years, five months, and sixteen days of Level V incarceration, suspended for one year of probation with GPS monitoring. Powel remained subject to TASC monitoring under the VOP sentencing order.

(6) In July 2023, DOC filed another administrative warrant for Powel. DOC also filed a report alleging that Powel had violated his probation by testing positive for cocaine and alcohol multiple times, missing his curfew several times, and discontinuing contact with TASC. The report also alleged that Powel was clocked driving 150 miles per hour on the highway.

(7) At a hearing on August 14, 2023, Powel admitted to violating his probation, but disputed driving over 150 miles an hour, complained about having to drive from his current residence in Middletown to Dover where he was no longer employed, and criticized TASC personnel. DOC recommended that Powel

be sentenced to a Level V or Level IV program and eighteen months of probation with GPS monitoring. TASC also supported a Level V or Level IV program and noted that sober housing might be appropriate. Powel asked not to be sentenced to a treatment program, stating that he had already engaged in treatment and served Level V time for the convictions.

(8) The Superior Court sentenced Powel as follows: (i) for noncompliance with bond in Cr. ID No. 2105015489, effective July 27, 2023, five years of Level V incarceration, suspended after one year of Level V incarceration and completion of a program within DOC's discretion for one year of probation with GPS monitoring; (ii) for strangulation, four years, five months, and sixteen days of Level V incarceration, suspended after six months of Level V incarceration for one year of probation with GPS monitoring; and (iii) for noncompliance with bond in Cr. ID No. 2107010519, four years, two months, and five days of Level V incarceration, suspended after six months of Level V incarceration for one year of probation with GPS monitoring. The Superior Court also ordered Powel to reside in a sober living facility during his probation. This appeal followed.

(9) Powel's arguments in his opening brief may be summarized as follows: (i) he stopped reporting to TASC because they were unhelpful and it was inconvenient for him to drive to Dover; (ii) the Superior Court erred in sentencing him more harshly than offenders who have committed more serious VOPs, not

imposing the sentence recommended by DOC and TASC, and not following the Sentencing Accountability Commission (“SENTAC”) guidelines; (iii) he will not be able to complete the requirements of his sentence because he suffers from multiple mental health issues; (iv) his original convictions were unrelated to substance abuse; and (v) the judge was biased against him based on her gender and the domestic nature of his crimes. For the reasons set forth below, these arguments are without merit.

(10) We construe Powel’s contention concerning TASC as a challenge to the Superior Court’s finding that Powel violated his probation. In a VOP hearing, unlike a criminal trial, the State is required to prove by a preponderance of the evidence that the defendant violated the terms of probation.¹ A preponderance of the evidence means “some competent evidence to prove the violation asserted.”² At the August 2023 hearing, Powel admitted that he had violated his probation. He complained of difficulties in communicating with TASC, but also admitted to drinking and doing drugs while on probation. Powel’s admissions at the hearing constituted sufficient competent evidence for the Superior Court to find him in violation and revoke his probation.³

¹ *Kurzmann v. State*, 903 A.2d 702, 716 (Del. 2006).

² *Brown v. State*, 249 A.2d 269, 272 (Del. 1968).

³ *Collins v. State*, 897 A.2d 159, 161 (Del. 2006).

(11) Most of Powel’s remaining contentions relate to his sentence. This Court’s appellate review of a sentence is extremely limited and generally ends upon a determination that the sentence is within statutory limits.⁴ When the sentence falls within the statutory limits, “we consider only whether it is based on factual predicates which are false, impermissible, or lack minimal reliability, judicial vindictiveness or bias, or a closed mind.”⁵ Once Powel committed a VOP, the Superior Court could impose any period of incarceration up to and including the balance of the Level V time remaining on his sentence.⁶ The Level V time imposed for Powel’s violation—one year for noncompliance with bond in Cr. ID No. 2105015489, six months for strangulation, and six months for noncompliance with bond in Cr. ID No. 2107010519—did not exceed the Level V time remaining on those sentences.

(12) Powel next argues that he received a harsher sentence than defendants who have committed more serious violations of probation but offers nothing to support this claim. As to the Court’s imposition of more Level V time than recommended by DOC and TASC, the Superior Court was not bound by those sentencing recommendations.⁷ Similarly, the SENTAC guidelines are non-binding

⁴ *Kurzmann*, 903 A.2d 702 at 714.

⁵ *Id.*

⁶ 11 *Del. C.* § 4334(c); *Pavulak v. State*, 880 A.2d 1044, 1046 (Del. 2005).

⁷ *See, e.g., Imle v. State*, 2020 WL 3397465, at *1 (Del. June 18, 2020) (recognizing that the Superior Court is not bound by the probation officer’s sentencing recommendation).

and do not provide a basis for appeal where, as here, the sentence falls within prescribed statutory limits.⁸

(13) Powel contends that mental health problems will prevent him from completing the requirements of his sentence, but he fails to explain why this is so or why this means he should not have to complete the substance abuse treatment contemplated by his original plea agreement. The inclusion of TASC monitoring in the original plea agreement contradicts Powel's assertion that his original convictions were unrelated to substance abuse. According to the arrest warrant in Cr. ID No. 210505489, Powel was visibly intoxicated when he was found with his ex-girlfriend in violation of a no-contact order.⁹

(14) Finally, Powel argues that the judge was biased against him because of her gender and the domestic nature of his crimes. The transcript of the VOP hearing does not support this claim. The transcript shows that the Superior Court judge listened to everything Powel's counsel and Powel had to say. When Powel finished speaking, the Superior Court judge noted that she had sentenced him to time-served for his previous violation and that he had displayed a pattern of wilful non-compliance with sentencing conditions. Within three months of his release from incarceration for his last violation, Powel tested positive for cocaine and alcohol and missed his curfew. Under these circumstances, the Superior Court

⁸ *Mayes v. State*, 604 A.2d 839, 845 (Del. 1992).

⁹ *State v. Powel*, Cr. ID No. 210505489, D.I. 1.

judge could reasonably conclude that Powel's violation of probation merited the Level V sentence imposed. There is no indication that the Superior Court judge was biased against Powel.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED and the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Abigail M. LeGrow _____
Justice