

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT PIPER,	§
	§ No. 373, 2023
Defendant Below,	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware
v.	§
	§ Cr. ID Nos. S2301008437
STATE OF DELAWARE,	§ S2301007516
	§ S2301005855
Appellee.	§
	§

Submitted: February 16, 2024

Decided: April 10, 2024

Before **SEITZ**, Chief Justice; **VALIHURA** and **GRIFFITHS**, Justices.

ORDER

Upon consideration of the appellant’s opening and supplemental opening brief, the appellee’s motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Robert Piper, filed this appeal from his sentencing for violations of probation (“VOPs”). The State has moved to affirm the judgment below on the ground that it is manifest on the face of Piper’s opening brief that his appeal is without merit. We agree and affirm.

(2) On July 26, 2023, Piper resolved multiple charges in three criminal cases by pleading guilty to third-degree criminal trespassing, three counts of possession of shoplifter’s tools, three counts of shoplifting property worth less than

\$1500, and noncompliance with conditions of release. The Superior Court imposed an aggregate sentence of thirteen years of imprisonment, suspended after the 169 days that Piper had already served for one year of probation, with GPS monitoring for the first six months. The Superior Court also sentenced Piper to pay a fine of \$100 and ordered him to pay restitution to Lowe's and Home Depot and to have no contact with any Lowe's or Home Depot location.

(3) On August 15, 2023, a probation officer filed a VOP report alleging that Piper had violated probation by failing to report to probation as required, leaving the state, and residing in Maryland without reporting a change of address. The report also alleged that Piper had allowed his GPS monitor to lose its charge and had visited a Food Lion store in violation of a no-contact order in another case.

(4) At a VOP hearing on September 22, 2023, Piper admitted that he had violated probation by leaving the state and allowing his GPS monitor to lose its charge. Based on his admission, the court found Piper in violation of probation. The court then heard remarks from the probation officer, Officer Hopkins, regarding sentencing. Officer Hopkins stated that another officer who fitted Piper with the GPS monitor explained the requirement that Piper not leave the state, but that Piper "literally left our office and went to [Maryland]." Officer Hopkins further stated that he contacted Piper by telephone and told him to return to Delaware, but Piper did not return. The officer also stated that Piper was breaking no-contact orders "daily"

while in Maryland and that after allowing the GPS monitor to lose its charge, Piper cut off the anklet. The court also heard from Piper, who again admitted leaving the state but disputed statements that Officer Hopkins made indicating that Piper had engaged in shoplifting activities while in Maryland. After hearing from Officer Hopkins and Piper, the Superior Court sentenced Piper to a total of twelve years and five months of imprisonment, suspended after one year and completion of a program at DOC discretion for decreasing levels of supervision.

(5) On appeal to this Court, Piper challenges the sentences imposed for the VOPs, arguing that (i) they require him to serve more time than sentencing guidelines¹ establish for “technical” violations of probation without sufficiently justifying the departure and (ii) the court had prejudged the case. Piper also asserts a claim of ineffective assistance of counsel, which we will not consider for the first time in this appeal.²

(6) “It is well-established that appellate review of sentences is extremely limited.”³ Our review of a sentence generally ends upon a determination that the sentence is within the statutory limits prescribed by the legislature.⁴ If the sentence falls within the statutory limits, we consider only whether it is based on factual

¹ We infer that Piper is referring to sentencing guidelines established by the Sentencing Accountability Commission (“SENTAC”).

² *E.g.*, *Witty v. State*, 2022 WL 3206086, at *1 (Del. Aug. 8, 2022); *Erwin v. State*, 2019 WL 6833859, at *1 (Del. Dec. 13, 2019).

³ *Kurzmann v. State*, 903 A.2d 702, 714 (Del. 2006).

⁴ *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).

predicates that are false, impermissible, or lack minimal reliability; judicial vindictiveness or bias; or a closed mind.⁵ When sentencing a defendant for a VOP, the trial court may impose any period of incarceration up to and including the balance of the Level V time remaining to be served on the original sentence.⁶

(7) Piper does not contend that the Level V time imposed for the VOPs exceeds the Level V time remaining on his original sentences. To the extent that Piper asserts arguments based on the SENTAC guidelines, those guidelines are non-binding and do not provide a basis for appeal if the sentence falls within prescribed statutory limits.⁷ Moreover, the sentencing judge's remarks during sentencing indicate that the court imposed the Level V time because Piper's repetitive criminal conduct, previous violations of probation in other cases, and immediate violation in this case demonstrated that he was not amenable to lower levels of supervision. As for Piper's contention that the court had prejudged the case, the transcript reflects that (i) the judge expressed his familiarity with Piper's criminal history based on having sentenced Piper for the underlying convictions less than two months earlier, and (ii) the judge had conferred with court staff to ensure that the court gave Piper any credit for time served that was due. Piper has not established any basis to

⁵ *Kurzmann*, 903 A.2d at 714.

⁶ 11 *Del. C.* § 4334(c).

⁷ *Mayer*, 604 A.2d at 845.

conclude that his VOP sentences exceeded the Level V time remaining on his original sentences or are otherwise subject to reversal.

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/ Collins J. Seitz, Jr.
Chief Justice