

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LENNON K. DAVIS,	§
	§ No. 200, 2024
Defendant Below,	§
Appellant,	§ Court Below–Superior Court
	§ of the State of Delaware
v.	§
	§ Cr. ID No. 2105015323 (N)
STATE OF DELAWARE,	§
	§
Appellee.	§

Submitted: September 12, 2024
Decided: November 6, 2024

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

ORDER

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

(1) The appellant, Lennon Davis, appeals the Superior Court’s order sentencing him for a violation of probation (“VOP”). The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest from the face of Davis’s opening brief that his appeal is without merit. We agree and affirm.

(2) In May 2021, police officers responded to a domestic incident involving Davis and Angie Johnson,¹ with whom Davis was prohibited from having contact,

¹ The Court has assigned a pseudonym to Davis’s ex-girlfriend under Supreme Court Rule 7(d).

and Davis became combative when an officer attempted to take him into custody. Davis was charged with second-degree assault and resisting arrest with force or violence (for his contact with the arresting officer) and with second-degree unlawful imprisonment, offensive touching, and non-compliance with bond conditions (for his contact with Johnson). On March 30, 2022, Davis pleaded guilty to resisting arrest and non-compliance with bond conditions. The Superior Court immediately sentenced Davis as follows: for resisting arrest, to two years of incarceration, suspended after one year followed by eighteen months of Level III probation; and for non-compliance with bond conditions, to one year of incarceration, suspended for eighteen months of Level III probation. As a special condition of his sentence, the court re-imposed a no-contact order prohibiting Davis from contacting Johnson. Davis did not appeal his convictions or sentence.

(3) In February 2023, Davis's probation officer filed a VOP report alleging that Davis had violated the terms of his probation because he had been in contact with Johnson. On March 16, 2023, the Superior Court found that Davis had violated the terms of his probation and resentenced him as follows: for resisting arrest, to one year of incarceration, suspended after the successful completion of a Level III substance abuse treatment program followed by one year of Level III (GPS monitoring) probation; and for non-compliance with bond conditions, to one year of incarceration, suspended for one year of Level III probation (GPS monitoring). As

a special condition of his sentence, the court ordered Davis to complete a domestic violence intervention program.

(4) In January 2024, Davis's probation officer filed a VOP report alleging that Davis had violated the terms of his probation by: (i) failing to report as directed to his probation officer; (ii) failing to report his change of address to his probation officer; (iii) failing to start, much less complete, a domestic violence intervention program; and (iv) allowing the battery of his GPS-monitoring ankle bracelet to die. In April 2024, Davis's probation officer filed an administrative warrant alleging that Davis had violated the terms of his probation by: (i) absconding from probation in December 2023; and (ii) admitting to consuming alcohol, in violation of a special condition of his probation.

(5) At the May 7, 2024 VOP hearing, Davis—with the assistance of counsel—admitted to violating the terms of his probation by failing to report to his probation officer. Before sentencing, both Davis and his counsel described for the court the circumstances that led to Davis violating the terms of his probation and the efforts that Davis had made to comply with the court's March 2023 VOP sentence both before and after he was arrested on the administrative warrant in April 2024. Accepting Davis's admission that he had violated the terms of his probation, the Superior Court resentenced Davis as follows: for resisting arrest, to six months of Level IV probation (DOC discretion) followed by one year of Level III probation

(GPS monitoring); and for non-compliance with bond conditions, to one year of incarceration, suspended for one year of Level III probation (GPS monitoring). This appeal followed.

(6) It is well-established that appellate review of a sentence is extremely limited.² When the sentence falls within the statutory limits prescribed by the legislature, we consider only “whether it is based on factual predicates [that] are false, impermissible, or lack minimal reliability, judicial vindictiveness or bias, or a closed mind.”³ Once a defendant has admitted that he violated the terms of the probation, the Superior Court may impose any period of incarceration up to and including the balance of Level V time remaining on the original sentence.⁴

(7) In his opening brief on appeal, Davis reiterates much of what he told the Superior Court at the VOP hearing—among other things, he tells the Court that: (i) he did not enroll in a domestic violence intervention program initially because he was prioritizing his probation officer’s admonition to “stay out of trouble,” (ii) he had successfully completed part of his March 2023 probationary sentence, and (iii) he had renewed his efforts to comply with his probationary sentence following his arrest in April 2024. Davis also argues that: (i) his sentence is illegal, (ii) there was no evidence to support his probation officer’s claim that he admitted to drinking

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

³ *Id.*

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

alcohol, and (iii) the Superior Court sentenced him with a closed mind. Davis's arguments are unavailing.

(8) *First*, Davis's VOP sentence is legal: it is not—as Davis claims—“illegal to repetitively start a suspended sentence,”⁵ and the sentence that the Superior Court imposed does not exceed the balance of Level V time remaining on Davis's original sentence. *Second*, the Superior Court found that Davis violated the terms of his probation because he admitted that he had failed to report as directed to his probation officer; the Superior Court did not find that Davis had violated the terms of his probation because he consumed alcohol. *Third*, it is clear from the VOP hearing transcript that the Superior Court did not sentence Davis with a closed mind: the Superior Court judge listened to Davis's comments, made note of his recent progress, and declined to follow his probation officer's recommendation to impose a Level V sentence.

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

BY THE COURT:

/s/ Gary F. Traynor
Justice

⁵ Opening Br. at 1.