

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDUARDO A. GRIFFITH,	§
	§ No. 267, 2024
Defendant Below,	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware
v.	§
	§ Cr. ID No. K2108016001
STATE OF DELAWARE,	§
	§
Appellee.	§

Submitted: November 20, 2024

Decided: January 21, 2025

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

ORDER

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

(1) The appellant, Eduardo Griffith, filed this appeal from his sentence for a violation of probation ("VOP"). The State has moved to affirm the judgment below on the ground that it is manifest on the face of Griffith's opening brief that his appeal is without merit. We agree and affirm.

(2) In September 2022, Griffith resolved multiple charges by pleading guilty to possession of ammunition by a person prohibited. The Superior Court sentenced Griffith to eight years of imprisonment, suspended after three years for decreasing levels of supervision.

(3) On May 15, 2024, a probation officer filed a VOP report alleging that Griffith had violated probation. The report alleged that Griffith had been serving the Level IV portion of his sentence at the Sussex Community Corrections Center/Sussex Work Release Center. On May 5, 2024, he did not return from an approved “Phase Pass.” A warrant was issued for his arrest on a charge of escape after conviction. A few days later, probation and parole officers found Griffith hiding in another probationer’s bathroom. The report alleged that arresting officers found a key in Griffith’s pocket, which led to a vehicle that contained substantial quantities of cocaine and marijuana, resulting in new drug charges against Griffith.

(4) At the VOP hearing, Griffith admitted the VOP based on the escape, and the Superior Court found Griffith in violation of probation. The court sentenced Griffith to a total of four years and seven months of imprisonment, suspended after nine months (to be served under 11 *Del. C.* § 4204(k)) for one year of Level III probation.

(5) On appeal, Griffith admits, as he did at the VOP hearing, that he violated his probation by escaping. He challenges only his sentence, arguing that the Superior Court erroneously considered the new drug charges, which were still pending at the time of the VOP hearing. He also states that he needs counseling and treatment, not prison time.

(6) Griffith's appeal is without merit. "It is well-established that appellate review of sentences is extremely limited."¹ Our review of a sentence generally ends upon a determination that the sentence is within the statutory limits prescribed by the legislature.² 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.³ Griffith does not contend that the sentence imposed exceeded the Level V time remaining on his sentence. His contention that he was sentenced based on the new drug charges is not supported by the record.⁴ Moreover, even if the VOP had been adjudicated, or the sentence imposed, based on the new charges, the "Superior Court has the authority to revoke probation and to impose a VOP sentence on the basis that a probationer has been charged with new criminal conduct, regardless of whether the new charges have yet been adjudicated."⁵ The Superior Court acted within its discretion when sentencing Griffith for violating probation by escaping.

¹ *Kurzmann v. State*, 903 A.2d 702, 714 (Del. 2006).

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

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

⁴ *State v. Griffith*, I.D. No. 2108016001, Transcript of VOP Hearing, at 3:7-9 (Del. Super. Ct. June 10, 2024) (defense counsel: "Mr. Griffith does admit the escape. . . . [T]he new charges from May 8th are still pending. So I did advise him not to discuss those charges."); *id.* at 8:3-7 (judge stating that he was not basing the VOP adjudication or sentence on the new charges but on the fact of the escape).

⁵ *Hickman v. State*, 2023 WL 176828, at *1 (Del. Jan. 12, 2023).

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/ N. Christopher Griffiths

Justice