

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

AMBER NEFF,	)	
	)	
Defendant-Below/Appellant,	)	
	)	
v.	)	
	)	ID No. 2208000208
STATE OF DELAWARE,	)	
	)	
Plaintiff-Below/Appellee.	)	
	)	

Submitted: August 7, 2025

Decided: August 19, 2025

*On Appeal from the Court of Common Pleas of the State of Delaware*

**AFFIRMED.**

**ORDER**

Amber Neff (SBI# 00607653), Hazel D. Plant Women's Treatment Facility, 620 Baylor Blvd, New Castle, DE 19720, Defendant-Below/Appellant, *pro se*.

Samuel B. Kenney, Esquire, Deputy Attorney General, DEPARTMENT OF JUSTICE, Carvel State Building, 820 N. French Street, 7th Floor, Wilmington, DE 19801, Attorney for Plaintiff-Below/Appellee State of Delaware.

**WHARTON, J.**

This 19<sup>th</sup> day of August 2025, upon consideration of the parties' briefs and the record in this matter, it appears to the Court that:

1. Defendant-Below/Appellant Amber Neff ("Neff") pled guilty to misdemeanor theft in the Court of Common Pleas on September 9, 2024.<sup>1</sup> She was sentenced to one year at Level V, with 15 days credit, suspended for 360 days at Level II probation.<sup>2</sup> She was to have a substance abuse evaluation, TASC monitoring, and zero tolerance for any new theft charges.<sup>3</sup> On October 25, 2024, she was found in violation of her probation, her probation was revoked and she was sentenced to 11 months at Level V, suspended after 22 days with credit for 22 days, for 12 months Level III inpatient drug treatment at the Department of Correction's discretion with a hold at Level V until space was available at Level III.<sup>4</sup> After successful completion of the in-patient drug treatment, she was to be placed on the Level III Drug Court probation track with TASC monitoring.<sup>5</sup> She was also to have a drug abuse evaluation and follow any treatment recommendations.<sup>6</sup> On February 19, 2025, Neff was found in violation of the probation track and sentenced to 343 days at Level V suspended after 45 days, with credit for 21 days, followed by one year at

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<sup>1</sup> Court of Common Pleas Docket. (The docket items are not numbered.)

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

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

<sup>6</sup> *Id.*

Level III with all of the previous conditions of probation reimposed.<sup>7</sup> Finally, that sentence was modified on March 6, 2025 after a termination hearing to 343 days at Level V, suspended after 45 days with credit for 21 days, for one year at the Level IV R2R program, suspended after successful completion for one year at Level III aftercare with TASC monitoring.<sup>8</sup>

2. In this appeal, Neff argues that: (1) her sentence was too harsh; and (2) there was no basis at the March hearing to change her sentence.<sup>9</sup> In her Opening Brief she asks that certain evidence be produced which she contends would support her contention that there was no basis to change her sentence.<sup>10</sup> Among those items she requests are the audio recordings of the February 19<sup>th</sup> and March 6<sup>th</sup> hearings.<sup>11</sup> In her Reply Brief, she amends that request, asking that if she is successful, this Court impose a time served sentence with no probation or TASC monitoring.<sup>12</sup>

3. In its Answering Brief the State contends that Neff “makes no articulable argument concerning the substantive or procedural validity of her sentence. The

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Op. Br., D.I. 5.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Reply Br., D.I. 7.

appellant argues neither that her sentence was illegal nor that it was without a basis.”<sup>13</sup>

4. The Superior Court is authorized to consider appeals from the Court of Common Pleas in criminal matters.<sup>14</sup> When reviewing decisions of the Court of Common Pleas, this Court sits as an intermediate appellate Court whose function on such appeals mirrors that of the Supreme Court of Delaware.<sup>15</sup> In considering an appeal from the Court of Common Pleas to the Superior Court, the Superior Court determines whether there is legal error and whether the factual findings made by the trial judge are sufficiently supported by the record.<sup>16</sup> This Court reviews such findings for an abuse of discretion; the lower court’s factual findings will be upheld if such findings are not “clearly erroneous.”<sup>17</sup> Moreover, this Court will accept the factual findings of the Court of Common Pleas if the findings are “sufficiently sup-

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<sup>13</sup> Ans. Br., at 2, D.I. 6.

<sup>14</sup> 11 *Del. C.* § 5301(c).

<sup>15</sup> *See State v. Richards*, 1998 WL 732960, \*1 (Del. Super. Ct. 1998); *DiSabatino v. State*, 808 A.2d 1216, 1220 (Del. Super. Ct. 2002). *See also Casey v. State*, 2000 WL 33179628, \*2 (Del. Super. Ct. 2000) (“When reviewing an appeal from the Court of Common Pleas, this Court assumes the same appeal posture as that of the Supreme Court.”).

<sup>16</sup> *Onkeo v. State*, 957 A.2d 2, at \*1 (Table) (Del. 2008).

<sup>17</sup> *See, e.g., Lopez-Vazquez v. State*, 956 A.2d 1280, 1285 (Del. 2008) (“To the extent the trial judge’s decision is based on factual findings, we review for whether the trial judge abused his or her discretion in determining whether there was sufficient evidence to support the findings and whether those findings were clearly erroneous.”).

ported by the record and are the product of an orderly and logical deductive process.”<sup>18</sup> If the factual findings of the Court of Common Pleas are so supported, such findings must be accepted by this Court, “even if, acting independently, it would have reached a contrary conclusion.”<sup>19</sup> Legal questions are reviewed *de novo*.<sup>20</sup> Revocation of probation is reviewed for abuse of discretion.<sup>21</sup> Further:

Appellate review of a sentence is limited to whether the sentence is within the statutory limits prescribed by the General Assembly and whether it is based on factual predicates which are false, impermissible or lack minimal reliability, judicial vindictiveness or bias or a closed mind. When a sentence is within the statutory limits, [the] Court will not find an abuse of discretion unless it is clear that

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<sup>18</sup> *Oneko*, at \*1 (Del. 2008).

<sup>19</sup> *Id.*; see also *State v. Ministero*, 2006 WL 3844201, \*5 (Del. Super. Ct. 2006) (“Regardless of whether this Court would have ruled in the same fashion, because the record supports the trial court’s decision that the test performed by the trooper did not clearly comply with requirements of the NHTSA standards, the trial court’s assessment of the weight to give the HGN test results based on the testing conditions must be accepted by this Court, as it was not clearly erroneous.”); *Steelman v. State*, 2000 WL 972663, \*1 (Del. Super. Ct. 2000) (“When addressing appeals from the Court of Common Pleas. . .the [Superior Court’s] role is to ‘correct errors of law and to review the factual findings of the court below to determine if they are sufficiently supported by the record and are the product of an orderly and logical deductive process.’”); *State v. Karg*, 2001 WL 660014, \*1 (Del. Super. Ct. 2001) (“When the factual findings of the court below are sufficiently supported by the record and are the product of an orderly and logical deductive process, they must be accepted notwithstanding the fact that the Superior Court may have reached opposite conclusions.”).

<sup>20</sup> *DiSabatino v. State*, 808 A.2d 1216, 1220 (Del. Super. 2002).

<sup>21</sup> *Brown v. State*, 249 A.2d 269, 272 (Del. 1968).

the sentencing judge relied on impermissible factors or exhibited a closed mind.<sup>22</sup>

5. The Court begins with the observation that Neff's sentence is within the statutory range for the class A misdemeanor of Theft of up to one year at Level V.<sup>23</sup> Neff does not argue that her sentence is one the Court could not have imposed – she just contends that it was too harsh. Nor does she argue that it was vindictive or the product of a closed mind. In situations where a defendant feels a sentence was too harsh, the defendant has available the remedy of moving for a modification of sentence.<sup>24</sup> Neff did not avail herself of that option, although the remedy she seeks in the Reply Brief is just that – a modification of her sentence. Accordingly, the Court finds that the sentencing court did not abuse its discretion in the length or nature of its sentence.

6. The other issue raised by Neff – whether there was a basis for terminating her from the probation track and imposing her current sentence – cannot be resolved on this record. The record does not contain a transcript of the March 6<sup>th</sup> hearing. Although Neff's Notice of Appeal designates the transcript of that hearing, one does not appear to have been produced for appellate review. The responsibility for ensuring a transcript is produced falls on the appellant. In Neff's case she could

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<sup>22</sup> *Weston v. State*, 742 A. 2d 742, 746 (Del. 2003).

<sup>23</sup> 11 *Del. C.* § 4206(a).

<sup>24</sup> C.C.P. Crim. R. 35(b).

either pay for the preparation of the transcript herself or ask that the transcript be prepared at state's expense via an *in forma pauperis* application if she is unable to pay for it. It appears Neff has done neither. Accordingly, because Neff has provided an inadequate record for the Court to consider this argument, it does not consider it.

**THEREFORE**, the judgment of the Court of Common Pleas is **AFFIRMED**.

**IT IS SO ORDERED.**

/s/ Ferris W. Wharton  
Ferris W. Wharton, J.