

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DWAYNE C. BRINKLEY,	§
	§ No. 258, 2026
Defendant Below,	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware
v.	§
	§ Cr. ID No. 2512006923(K)
STATE OF DELAWARE,	§
	§
Appellee.	§

Submitted: August 13, 2026
Decided: October 19, 2026

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

ORDER

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

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

(2) On January 21, 2026, Brinkley pleaded guilty to third-degree burglary. The Superior Court sentenced Brinkley, effective December 12, 2025, to three years of Level V incarceration suspended for one year of Level III probation.

(3) On March 23, 2026, an administrative warrant was filed for Brinkley's VOP. The VOP report alleged that Brinkley had violated his probation by, among other things, testing positive for cocaine and failing to report for a random urine screen. On April 10, 2026, the Superior Court found that Brinkley had violated his probation. The Superior Court sentenced Brinkley, effective March 23, 2026, to two years, ten months, and twenty-one days of Level V incarceration, suspended for six months of Level III GPS probation, followed by six months of Level III probation.

(4) On May 12, 2026, an administrative warrant was filed for Brinkley's VOP. The VOP report alleged that Brinkley had violated his probation by (i) failing to obtain a substance abuse evaluation as directed by his probation officer on April 20, 2026 after Brinkley tested positive for cocaine, (ii) testing positive for cocaine and admitting to use of cocaine on May 11, 2026, and (iii) failing to abide by his curfew on May 6, 7, 9, and 10.

(5) After a hearing, the Superior Court found that Brinkley had violated his probation. The Superior Court sentenced Brinkley, effective May 11, 2026, to two years, nine months, and twenty-six days of Level V incarceration, suspended after eighteen months of Level V incarceration and successful completion of a Level V inpatient drug treatment program for one year of Level III probation. This appeal followed.

(6) In his opening brief, Brinkley argues that his VOP counsel was ineffective, that his probation officer was unhelpful and impatient with his diligent efforts to obtain a substance abuse evaluation, and that the VOP sentence constitutes cruel and unusual punishment for technical violations. These arguments are unavailing.

(7) As to Brinkley's first argument, this Court generally does not consider ineffective assistance of counsel claims for the first time on direct appeal and declines to do so here.¹ Turning to his second argument, Brinkley admits in his opening brief that he tested positive for cocaine. He also does not dispute his curfew violations. The Superior Court had a sufficient basis for finding that Brinkley violated his probation.

(8) Finally, this Court's appellate review of a sentence is extremely limited and generally ends upon a determination that the sentence is within statutory limits.² 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."³ Once Brinkley

¹ *Williams v. State*, 272 A.3d 273, 2022 WL 351084, at *1 (Del. Feb. 4, 2022) (TABLE) (citing *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994)).

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

³ *Id.*

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.⁴ The Level V time imposed for Brinkley's VOP—two years, nine months, and twenty-six days of Level V incarceration, suspended after eighteen months of Level V incarceration and successful completion of a Level V inpatient drug treatment program—does not exceed the Level V time remaining on the sentence. Nor does it constitute cruel and unusual punishment.

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

BY THE COURT:

/s/ Gary F. Traynor
Justice

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