

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYRONE MILLER,	§
	§ No. 42, 2008
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0509002044
	§ 0401018692
Plaintiff Below-	§
Appellee.	§

Submitted: February 19, 2008

Decided: March 7, 2008

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 7th day of March 2008, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Tyrone Miller, filed an appeal from the Superior Court's January 8, 2008 order denying his motion for sentence modification/reduction pursuant to Superior Court Criminal Rule 35(b). The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and affirm.

(2) In September 2004, Miller pleaded guilty to one count of Possession of Cocaine Within 300 Feet of a Park and one count of Loitering. He was sentenced on the drug conviction to 4 years at Level V incarceration, to be suspended for 2 years at Level IV, to be suspended in turn after 6 months for the balance to be served at Level III probation. He was given a fine on the loitering conviction.

(3) After two weeks, Miller was found to have committed a violation of probation (“VOP”). His sentence was modified to require that he be held at Level IV until space was available at Level IV Home Confinement or Level IV Work Release. In June 2005, Miller again was found to have committed a VOP. His probation was revoked and he was re-sentenced to 4 years at Level V, to be suspended for 18 months at Level IV Plummer Center, in turn to be suspended after 4 months for probation. Miller also was ordered to continue a psychiatric outpatient program and engage in marriage or domestic violence counseling.

(4) In September 2005, Miller again was arrested and was charged with Escape After Conviction, resulting in another VOP. He was re-sentenced to 3 years at Level V, to be suspended for Level III probation. In August 2007, Miller was arrested once again and, in September 2007, was

found to have committed a VOP. He was re-sentenced to 3 years at Level V, to be discharged as unimproved after 2 years.

(5) In this appeal, Miller claims that he is entitled to a new VOP hearing because a) he was not given a psycho-forensic evaluation prior to the September 2007 VOP hearing; b) his case manager should have been, but was not, present at the hearing; and c) he was not able to consult with an attorney prior to the hearing.

(6) As the appellant, it was Miller's burden to provide those portions of the VOP hearing transcript necessary to give this Court a fair and accurate account of the context in which the claims of error occurred.¹ Miller's failure to provide the Court with the transcript precludes our appellate review of his claims.² Moreover, a VOP hearing is not a stage of a criminal prosecution to which the full panoply of trial rights applies.³ As such, Miller was not constitutionally entitled to the assistance of counsel at the VOP hearing.⁴ Miller has not demonstrated any violation of his constitutional rights.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by

¹ *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987); Supr. Ct. R. 9(e) (ii) and 14(e).

² *Slater v. State*, 606 A.2d 1334, 1337 (Del. 1992).

³ *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973).

⁴ *Jones v. State*, 560 A.2d 1056, 1057 (Del. 1989).

settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice