

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSE RODRIGUEZ,	§	
	§	No. 511, 2008
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0612014440
Appellee.	§	

Submitted: October 16, 2008
Decided: December 23, 2008

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 23rd day of December 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) In February 2007, the appellant, Jose Rodriguez, pled guilty to Delivery of a Schedule II Narcotic Substance. Rodriguez was sentenced to six years imprisonment suspended after three months for five years and nine months at Level IV Crest suspended after successful completion for eighteen months of Level III aftercare.

(2) On January 16, 2008, an administrative warrant issued alleging that Rodriguez had violated his probation. The allegations were based on Rodriguez'

arrest on new charges and his failure to abide by his probation curfew. After a contested violation of probation (VOP) hearing in April 2008, the Superior Court adjudged Rodriguez guilty of VOP and sentenced him to five years at Level V imprisonment suspended upon successful completion of the Key Program for Level IV Crest and Level III Crest Aftercare. Rodriguez did not appeal.

(3) In July 2008, a Superior Court jury acquitted Rodriguez of the drug charges that in part had formed the basis of the VOP. In August 2008, Rodriguez moved to modify his April 2008 VOP sentence on the basis that the sentence did not give him credit for time previously served at Level V. By order dated September 10, 2008, the Superior Court summarily denied the motion as untimely. The Superior Court also reviewed the periods of time that Rodriguez had been held at Level V and concluded that he had been given credit for time he had served at Level V. This appeal followed.

(4) In his opening brief on appeal, Rodriguez argues only that his VOP conviction should be vacated because he was acquitted of the new charges that had in part formed the basis of the VOP. Rodriguez does not address his claim of credit due for time served. Thus, the Court concludes that Rodriguez has abandoned that claim on appeal.¹

¹ *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

(5) Rodriguez' claim that his July 2008 acquittal of the drug charges requires the reversal of the April 2008 VOP is not cognizable in this appeal, which is limited in scope to the Superior Court's denial of his motion for modification of sentence.² Moreover, Rodriguez' failure to provide the Court with a transcript of the VOP hearing precludes appellate review of his claim.³

(6) Upon review of the denial of a sentence modification, this Court will not interfere with the Superior Court's decision unless it appears that the sentence exceeded the maximum authorized by statute or was imposed on the basis of inaccurate or unreliable information.⁴ In this case, Rodriguez does not argue, nor does the record reflect, that the Superior Court imposed a sentence beyond the maximum allowed by law or based on inaccurate or unreliable information.

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

² See *Pipkin v. State*, 2004 WL 2419087 (Del. Supr.) (holding that defendant could not use an appeal from the denial of a motion for reduction of sentence to collaterally attack the merit of his VOP conviction).

³ Rodriguez did not request the preparation of transcript for this appeal. See *Miller v. State*, 2008 WL 623199 (Del. Supr.) (citing *Slater v. State*, 606 A.2d 1334, 1337 (Del. 1992)).

⁴ *Melody v. State*, 2003 WL 1747237 (Del. Supr.) (citing *Mayes v. State*, 604 A.2d 839, 842-43 (Del. 1992)).