

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|--------------------|--------------------------------|
| STEVEN DOLLARD, | § |
| | § No. 198, 2013 |
| 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. 1301011737 |
| | § |
| Plaintiff Below- | § |
| Appellee. | § |

Submitted: August 22, 2013
Decided: September 20, 2013

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 20th day of September 2013, 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, Steven Dollard, filed an appeal from the Superior Court’s April 3, 2013 violation of probation (“VOP”) sentencing order. 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 this appeal is without merit.¹ We agree and affirm.

¹ Supr. Ct. R. 25(a).

(2) The record before us reflects that, in September 2005, Dollard pleaded guilty to Possession of Cocaine Within 1,000 Feet of a School and Resisting Arrest. On the possession conviction, he was sentenced to 10 years of Level V incarceration, to be suspended after 4 years for 6 years at Level IV Halfway House, in turn to be suspended after 12 months for 2 years of Level III probation. On the conviction of resisting arrest, he was sentenced to 1 year at Level V, to be suspended for 1 year of concurrent Level III probation. On April 3, 2013, after a contested VOP hearing, Dollard was found to have committed a VOP. He was re-sentenced to 6 years at Level V, to be suspended after 4 years for 1 year of Level III probation. This appeal followed.

(3) In this appeal, Dollard claims that the judge at the VOP hearing sentenced him with a “closed mind” because he was found to have committed a VOP even before he had been indicted on any criminal charges.

(4) The transcript of the VOP hearing reflects that a police officer testified that Dollard was observed making a controlled sale of heroin, leading to the issuance of a warrant to search Dollard’s room in his mother’s apartment. That search revealed personal items belonging to Dollard, including 21 Ziploc bags containing heroin. In addition, Dollard himself was in possession of the money obtained through the controlled sale. The record reflects that Dollard had not yet been indicted on drug charges, but later pleaded guilty to drug dealing and

possession of drug paraphernalia, charges stemming from the police search of his room.

(5) Under Delaware law, a judge imposes sentence with a “closed mind” when the sentence is based upon a preconceived bias without consideration of the nature of the offense or the character of the defendant.² Our review of the VOP hearing transcript reveals no such bias on the part of the sentencing judge. Moreover, there was ample evidence presented at the hearing to support the finding of a VOP. Dollard’s later plea of guilty to drug charges, based upon the identical facts adduced at the VOP hearing, renders moot any claim of insufficiency of the evidence to support the VOP.³ As such, we conclude that Dollard’s claim is without merit.

(6) 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 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’s motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

² *Cruz v. State*, 990 A.2d 409, 416 (Del. 2010).

³ *Dejesus v. State*, 977 A.2d 797, 799-800 (Del. 2009).