

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENYATTA E. PRESTON,	§
	§ No. 57, 2014
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 1304012723
Plaintiff Below-	§
Appellee.	§

Submitted: March 31, 2014

Decided: April 15, 2014

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

ORDER

This 15th day of April 2014, upon consideration of the opening brief and the State's motion to affirm, it appears to the Court that:

(1) The defendant-appellant, Kenyatta Preston, filed this appeal from the Superior Court's sentence for a violation of probation (VOP). The State of Delaware has filed a motion to affirm the trial court's judgment on the ground that it is manifest on the face of Preston's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Preston pled guilty on October 23, 2013 to one count each of DUI (Fourth Offense) and Endangering the Welfare of a Child. The Superior Court immediately sentenced Preston to a total period

of six years at Level V incarceration (with 121 days credit), to be suspended after serving six months in jail for eighteen months at Level III probation. Preston did not appeal.

(3) In December 2013, Preston was charged with violating probation because he had been arrested on new criminal charges, had failed to report to his probation officer, and had violated a special “zero tolerance” condition of his probation by consuming alcohol. On January 15, 2014, Preston pled guilty to Criminal Trespass in the First Degree. As a result of the new conviction, Preston also was found in violation of his probation at a VOP hearing on January 23, 2014. The Superior Court sentenced Preston on the VOP to a total period of five years at Level V incarceration to be suspended upon successful completion of the Key Program for one year at Level III probation. This appeal followed.

(4) In his opening brief on appeal, Preston asserts that, although he violated by probation by picking up a new criminal charge, the Superior Court erred in also finding that he had violated probation by violating the “zero tolerance” condition for alcohol consumption because there was no proof of that violation at his VOP hearing. Preston also asserts that the judge sentenced him with a closed mind because the judge considered the

unproven allegation of his alcohol consumption in sentencing him so harshly for his first VOP.

(5) We are unable to review either of these claims, however, because Preston failed to order and provide this Court with a copy of the transcript from his VOP hearing and sentencing. As the Court has held many times, the failure to include adequate transcripts of the proceedings, as required by the rules of the Court, precludes appellate review of a defendant's claims of error in the proceedings below.¹

(6) We do note that once Preston pled guilty to a new criminal charge, the Superior Court had sufficient competent evidence to find that he had violated his probation.² Moreover, once the VOP was established, the Superior Court was authorized to require Preston to serve the entire length of his suspended prison term in jail.³ Thus, the Superior Court, as a matter of law, could have sentenced Preston to serve the entire five years and six months remaining on his original sentence at Level V imprisonment. The Superior Court, however, only imposed a total period of five years at Level V incarceration to be suspended upon successful completion of the Key

¹ *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).

² *See Collins v. State*, 897 A.2d 159, 160-61 (Del. 2006) (holding that a VOP need only be proven by "some competent evidence" and that a defendant's admission was sufficient competent evidence).

³ *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999).

Program for one year at Level III probation. Thus, without more, the Court finds nothing on the face of the Superior Court's sentencing order to reflect that the judge sentenced Preston with a closed mind.

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

BY THE COURT:

/s/ Carolyn Berger
Justice