

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID H. DICKERSON,	§
	§ No. 26, 2013
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0811010588
	§
Plaintiff Below-	§
Appellee.	§

Submitted: March 7, 2013

Decided: April 11, 2013

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

ORDER

This 11th day of April 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, David H. Dickerson, filed an appeal from the Superior Court’s January 10, 2013 order denying his second motion for correction of an illegal violation of probation (“VOP”) sentence pursuant to Superior Court Criminal Rule 35(a). 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.¹ We agree and affirm.

(2) The record before us reflects that, in June 2009, Dickerson was found guilty by a Superior Court jury of Burglary in the Third Degree, Attempted Burglary in the Third Degree, Possession of Burglary Tools, Conspiracy in the Second Degree and Criminal Mischief. He was sentenced to a total of 11 years of Level V incarceration, with credit for 42 days served, to be suspended after 9 months for 1 year of Level III probation. Dickerson did not appeal his convictions.

(3) In July 2010, Dickerson left the work release center on a pass and did not return. He was arrested in New York on a traffic charge and was extradited back to Delaware in November 2010. On December 2, 2010 Dickerson pleaded guilty in the Court of Common Pleas to Escape in the Third Degree and was sentenced to 60 days at Level V. On December 10, 2010, Dickerson was found to have committed a VOP and was sentenced to a total of 10 years at Level V. Dickerson appealed, but later voluntarily withdrew his appeal.

(4) In March of 2012, Dickerson filed a motion to correct his allegedly illegal VOP sentence, which the Superior Court denied. In June of 2012, Dickerson filed a motion to modify his VOP sentence, which the Superior Court also denied. He appealed the Superior Court's denial of this latter motion, but later voluntarily withdrew his appeal. In December 2012, Dickerson filed a second

¹ Supr. Ct. R. 25(a).

motion to correct his allegedly illegal VOP sentence. The Superior Court denied the motion and this appeal ensued.

(5) In his appeal, Dickerson claims that a) his sentence is illegal because it is excessive, violates his constitutional rights and violates the SENTAC guidelines; and b) the Superior Court judge sentenced him with a “closed mind.”

(6) Dickerson’s first claim is that his sentence is illegal because it is excessive, violates his constitutional rights and violates the SENTAC guidelines. A sentence is “illegal” under Rule 35(a) if the sentence exceeds the statutorily-authorized limits.² Dickerson has not claimed, nor is there any evidence in the record before us, that his sentence exceeds the statutory limits. Moreover, once a defendant violates the terms of his probation, the Superior Court has the authority to require the defendant to serve any portion of a previously-suspended Level V term.³ Again, Dickerson has not claimed, nor is there any record evidence, that the Superior Court’s sentence requires Dickerson to serve more Level V time than remains on his original Level V sentence. While Dickerson claims that his sentence violates his constitutional rights, he offers no factual or legal support for that claim. Finally, it is well-settled that there is no constitutional or statutory right in Delaware to appeal a criminal punishment on the sole ground that it deviates

² *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998). A sentence also is illegal if it violates double jeopardy, is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to the substance of the sentence or is a sentence that the judgment of conviction did not authorize. *Id.*

³ *Mayes v. State*, 604 A.2d 839, 845 (Del. 1992).

from the SENTAC guidelines.⁴ For all of the above reasons, we conclude that Dickerson's first claim is without merit.

(7) Dickerson's second claim is that the sentencing judge imposed sentence with a "closed mind." 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.⁵ The transcript of the VOP sentencing hearing reflects that the judge explicitly considered Dickerson's past history of absconding from custody in formulating Dickerson's current sentence. There is no evidence that the judge sentenced Dickerson with a preconceived bias or without taking Dickerson's past history into consideration. As such, we conclude that Dickerson's second claim is likewise without merit.

(8) 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

⁴ *Siple v. State*, 701 A.2d 79, 83 (Del. 1997).

⁵ *Cruz v. State*, 990 A.2d 409, 416 (Del. 2010).