

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT L. DUNCAN,	§
	§ No. 354, 2013
Defendant Below,	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 0110019152
Plaintiff Below,	§
Appellee.	§

Submitted: August 13, 2013

Decided: August 23, 2013

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

**ORDER**

This 23<sup>rd</sup> day of August 2013, upon consideration of the appellant’s opening brief, the State’s motion to affirm, the parties’ supplemental filings,<sup>1</sup> and the record on appeal, it appears to the Court that:

(1) The appellant, Robert Duncan, appeals from the Superior Court’s order sentencing him for his sixth violation of probation (“VOP”). The sole issue Duncan raises on appeal is that the VOP charge should have been dismissed because he was held in detention for three days before the administrative warrant

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<sup>1</sup> The appeal was taken from a Superior Court sentencing order dated June 27, 2013. On July 31, 2013, the Superior Court issued a corrected sentencing order. In response, the Court asked for supplemental filings to determine what impact, if any, the corrected sentencing order had on the appeal. Both parties agree that the corrected sentencing order does not impact the issue raised on appeal.

was filed. We find no merit to this issue. Accordingly, we affirm the Superior Court's judgment.

(2) On March 4, 2002, Duncan pled guilty to Assault in the First Degree. The Superior Court sentenced him to ten years at Level V incarceration to be suspended after serving four years in prison for decreasing levels of supervision. Between 2007 and 2010, Duncan was charged five separate times with violating probation. On May 4, 2013, police arrested Duncan in Criminal ID No. 1305002624 on charges of Assault in the Third Degree and Terroristic Threatening. As a result of these new charges, on May 9, 2013, Duncan also was charged with his sixth VOP. On June 12, 2013, Duncan pled guilty to Assault in the Third Degree. The Court of Common Pleas sentenced him to one year at Level V incarceration to be suspended for one year at Level III probation. On June 27, 2013, the Superior Court held a VOP hearing and subsequently sentenced Duncan on his sixth VOP. This appeal followed.

(3) Duncan's sole contention on appeal is that his due process rights were violated, and thus the VOP charge should have been dismissed, because he was held in detention for three days before authorities filed the administrative warrant charging him with the VOP. Duncan, however, cites no legal support for his argument. Indeed, we find there is none.

(4) In Delaware, a defendant accused of a VOP is not entitled to a formal trial.<sup>2</sup> Nonetheless, certain minimum requirements of due process must be satisfied.<sup>3</sup> Those requirements are set forth in Superior Court Criminal Rule 32.1. Rule 32.1 provides that a defendant accused of a VOP is entitled to: (i) a bail hearing; (ii) written notice of the alleged violation; (iii) disclosure of the evidence against the defendant; (iv) an opportunity to appear and present evidence; (v) an opportunity to question adverse witnesses; and (vi) notice of the right to retain counsel.<sup>4</sup>

(5) In this case, Duncan was arrested and held on new criminal charges (to which he later pled guilty). The administrative warrant charging him with the VOP was filed three days after he was placed in custody on the new charges. Contrary to Duncan's contention, the State was not required to file the administrative warrant charging the VOP "immediately" upon Duncan's arrest. Delaware law simply does not impose such a requirement. Thus, we find no due process violation in this case.

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<sup>2</sup> *Jenkins v. State*, 8 A.3d 1147, 1153 (Del. 2010) (citation omitted).

<sup>3</sup> *Id.* (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 786 (1973)).

<sup>4</sup> DEL. SUPER. CT. CRIM. R. 32.1(a) (2013).

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

BY THE COURT:

/s/ Jack B. Jacobs  
Justice