

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NOE MOJICA,	§
	§ No. 358, 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 Nos. 0508004443
	§ 0508002954
Plaintiff Below-	§ 0506008643
Appellee.	§

Submitted: August 27, 2013

Decided: October 1, 2013

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

**ORDER**

This 1<sup>st</sup> day of October 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, Noe Mojica, filed an appeal from the Superior Court’s June 7, 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 the appeal is without merit.<sup>1</sup> We agree and affirm.

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<sup>1</sup> Supr. Ct. R. 25(a).

(2) The record before us reflects that, in November 2005, Mojica resolved three separate sets of criminal charges by pleading guilty to two counts of Robbery in the First Degree and one count each of Burglary in the Third Degree and Felony Criminal Mischief. He was sentenced to a total of 16 years of Level V incarceration, to be suspended after 6 years for decreasing levels of supervision.

(3) Mojica was found to have committed a VOP in August 2012, at which time he was re-sentenced to a total of 9 years at Level V, to be suspended for 3 years at Level III probation. In April 2013, he again was found to be in violation and was re-sentenced to a total of 9 years at Level V, to be suspended after 227 days for 2 years of Level III probation. On June 7, 2013, Mojica was found to have committed a third VOP and was sentenced to 8 years at Level V. This appeal followed.

(4) In this appeal, Mojica claims that a) his due process rights were violated because he did not learn of the evidence against him until the VOP hearing; and b) the Superior Court improperly breached the Enhanced Supervision Court Program contract that he signed by imposing an excessive sentence.

(5) Mojica's first claim is that his due process rights were violated at the VOP hearing. The Rules of this Court require an appellant to provide to the Court a transcript of the relevant portions of the proceedings below as are necessary to provide the Court with a fair and accurate account of the context in which the

alleged error occurred.<sup>2</sup> Even an appellant who is *pro se*, such as Mojica, is required to make his own financial arrangements to obtain the necessary transcript.<sup>3</sup> In the absence of a transcript, there is an inadequate record of the proceedings below, precluding our appellate review.<sup>4</sup> As such, we conclude that Mojica's first claim is unavailing.

(6) Mojica's second claim is that the Superior Court breached his Enhanced Supervision Court Program contract by imposing an excessive sentence. Based upon the record before us, it is unclear whether Mojica ever signed such a contract or, even assuming that he did, what the contract contained. In any case, the Superior Court has the authority to require a probationer who is found in violation to serve all of the Level V time remaining on his original sentence.<sup>5</sup> The record in this case reflects that Mojica's VOP sentence did not exceed the Level V time remaining on his original sentence, nor did it exceed the statutory maximum. We, therefore, conclude that Mojica's second claim is without merit.

(7) 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

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<sup>2</sup> Supr. Ct. R. 14(e). See also Supr. Ct. R. 9(e) (ii).

<sup>3</sup> *Mahan v. Mahan*, 2007 WL 1850905 (Del. June 28, 2007) (Ridgely, J.) (citing *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987)).

<sup>4</sup> *Id.*

<sup>5</sup> *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999) (citing Del. Code Ann. tit. 11, §4334(c)).

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