

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMAL H. ROBERTS,	§
	§ No. 42, 2013
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 1103003228
	§ 1109008081
Plaintiff Below-	§
Appellee.	§

Submitted: June 7, 2013
Decided: July 15, 2013

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

ORDER

This 15th day of July 2013, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Jamal H. Roberts, filed an appeal from the Superior Court’s January 3, 2013 corrected violation of probation (“VOP”) sentencing order and its denial of his motion for sentence modification. We find no merit to the appeal. Accordingly, we affirm.

(2) The record reflects that, on June 13, 2011, Roberts pled guilty to Felony Noncompliance With Conditions of Bond in Superior Court Criminal Identification Number 1103003228. He was sentenced to 2 years of Level V incarceration, with credit for 3 days served, to be suspended for 1

year at Level III probation. On December 22, 2011, Roberts was found to have committed a VOP in Cr. ID No. 1103003228. He was re-sentenced to 2 years at Level V, to be suspended after 60 days for 18 months at Level III.

(3) On January 26, 2012, Roberts again was charged with committing a VOP in Cr. ID No. 1103003228. On February 16, 2012, following a contested VOP hearing, Roberts was found to have committed another VOP. He was re-sentenced to 1 year, 9 months and 22 days at Level V, to be suspended after 1 year, 6 months for 3 months and 22 days at Level IV Work Release, to be held at Level V pending space availability.

(4) On February 14, 2012, 2 days before the VOP hearing, Roberts had pled guilty in Cr. ID No. 1109008081 to Failure to Obey a Police Officer Signal and Reckless Driving Alcohol Related. He had been sentenced to 2 years at Level V, to be suspended for 6 months at Level III, on the first conviction and to 30 days at Level V, to be suspended for 6 months at Level II (concurrent) on the second conviction.

(5) On March 2, 2012, Roberts appealed the Superior Court's February 14, 2012 VOP sentencing order on the ground that his VOP sentence did not comply with Del. Code Ann. tit. 11, §4204(1) because no Level V time had been imposed. This Court held, among other things, that Roberts was required to present that issue to the Superior Court by means of

a sentence modification motion in the first instance.¹ Following the filing of a supplemental sentence modification motion by Roberts, the Superior Court scheduled a hearing to address the issues raised. On January 3, 2013, the Superior Court issued a corrected sentencing order stating that the concurrent 6-month periods at Level III and Level II in Cr. ID No. 1109008081 satisfied the statutory requirement of §4204(1) in the sentencing order in Cr. ID No. 1103003228. The Superior Court also denied Roberts' latest motion for sentence modification.

(6) In this appeal, Roberts claims that the Superior Court erred and abused its discretion when it issued its corrected VOP sentencing order and denied his latest motion for sentence modification because his VOP sentence in Cr. ID No. 1103003228 does not comply with §4204(1). To the extent that Roberts has not included claims in this appeal that were presented to the Superior Court below, any such claims are deemed to be waived and will not be addressed by this Court.²

(7) Section 4204(1) provides as follows: “. . . whenever the court imposes a period of incarceration at Level V custody for 1 or more offenses that totals 1 year or more, then that court must include as part of its sentence a period of custodial supervision at either Level IV, III or II for a period of

¹ *Roberts v. State*, 2012 WL 1454829 (Del. Apr. 25, 2012).

² *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

not less than six months to facilitate the transition of the individual back into society.” The intent of the statutory language is to ensure that no individual is returned directly to the community without any transition or follow-up supervision.³

(8) In this case, the Superior Court combined elements of two sentencing orders in order to achieve compliance with §4204(1). In accordance with the Superior Court’s January 3, 2013 sentencing order in Cr. ID No. 1103003228, Roberts will serve 1 year, 6 months at Level V, to be followed by 3 months, 22 days at Level IV Work Release. He will then serve 6 months at Level III probation and, concurrently, 6 months at Level II, as contained in the sentencing order in Cr. ID No. 1109008081. That sentencing scheme not only reflects the Superior Court’s intent, but complies with the statutory requirement. We find no error or abuse of discretion on the part of the Superior Court in sentencing Roberts as it did and no error or abuse of discretion in the Superior Court’s denial of Roberts’ motion for sentence modification. We, therefore, conclude that the Superior Court’s judgment must be affirmed.

³ *Nave v. State*, 783 A.2d 120, 122 (Del. 2001).

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

BY THE COURT:

/s/ Carolyn Berger
Justice