

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARLES M. ROBINSON,	§	
	§	
Defendant Below-	§	No. 401, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for Sussex County
STATE OF DELAWARE,	§	Cr. A. No. 01-12-0557
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: December 30, 2004  
Decided: February 14, 2005

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

**ORDER**

This 14<sup>th</sup> day of February 2005, 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, Charles M. Robinson, filed an appeal from the Superior Court's September 3, 2004 order denying his motion for correction of illegal 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 Robinson's opening brief that the appeal is without merit. We agree and AFFIRM.

(2) In June 2002, Robinson pleaded guilty to Rape in the Fourth Degree and was sentenced to 10 years incarceration at Level V, to be suspended for one year at Level IV Home Confinement, to be followed by decreasing levels of probation. Both in November 2002 and in July 2003, Robinson was found to have committed a violation of probation (“VOP”). In July 2003, Robinson was given a VOP sentence of 9 years incarceration at Level V, to be suspended upon completion of the Family Problems Program, the Key Program and the Crest Program, to be followed by 3 years Level III Aftercare, 2 years Level II probation and 2 years Level I probation. Robinson appealed to this Court from the July 2003 finding of a VOP and we affirmed.<sup>1</sup>

(3) Between August 2003 and August 2004, Robinson filed numerous motions for correction of illegal sentence in the Superior Court, all of which were denied. On September 3, 2003, while he was incarcerated, Robinson was charged with threatening a Superior Court judge. The charge was dismissed in October 2003.

(4) On August 26, 2004, Robinson filed another motion for correction of sentence. In the motion, Robinson argued that his sentence was illegal because he

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<sup>1</sup> *Robinson v. State*, Del. Supr., No. 415, 2003, Berger, J. (July 20, 2004).

had not been afforded a hearing at which the grounds for a probationary sentence in excess of 2 years would be explained on the record.<sup>2</sup>

(5) On September 3, 2004, the same Superior Court judge whom Robinson was charged with threatening held a sentence review hearing on Robinson's motion to correct an illegal sentence. While agreeing with Robinson that he was entitled to a hearing, the judge ruled that Robinson's VOP sentence was not illegal. He explained that, in accordance with the statute, the rationale behind the VOP sentence was that Robinson, as a sex offender, would benefit from a probationary period substantially longer than 2 years.

(6) In this appeal, Robinson claims that: a) the Superior Court judge who presided over the review of sentence hearing should have disqualified himself because he was aware that Robinson had been charged with making threats against him; and b) the Superior Court judge's personal interest in the matter improperly influenced the outcome of the hearing.<sup>3</sup>

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<sup>2</sup> Del. Code Ann. tit. 11, § 4333(d) (2004). This statute (effective June 1, 2003) provides for a probationary period exceeding two years with respect to sentences imposed for sex offenses "if the sentencing court determines on the record that a longer period of probation . . . will reduce the likelihood that the offender will commit a sex offense . . . in the future . . . ."

<sup>3</sup> Because these claims have been raised for the first time in this appeal, we will review them for plain error. *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986) ("Under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process").

(7) The record does not reveal whether the Superior Court judge who presided over the review of sentence hearing was aware that Robinson had been charged with threatening him or not. The transcript of the September 3, 2004 sentence review hearing reflects that the judge did not mention the charge, which had been dismissed approximately 10 months before. Even if the judge was aware of the charge, the transcript of the hearing reflects no error, plain or otherwise, on his part in presiding over the hearing. The judge was not required to disqualify himself.<sup>4</sup> Furthermore, we find no evidence that any personal interest on the part of the judge improperly influenced the outcome of the hearing and, therefore, we find no plain error with respect to this claim.<sup>5</sup>

(8) It is manifest on the face of Robinson's 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, clearly there was no abuse of discretion.

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<sup>4</sup> *Los v. Los*, 595 A.2d 381, 383-85 (Del. 1991).

<sup>5</sup> Del. Code Ann. tit. 11, § 4333(d) (1) (2004).

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice