

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|--------------------|------------------------------|
| JOSEPH VINCENT, | § |
| | § No. 61, 2013 |
| Defendant Below, | § |
| Appellant, | § |
| | § |
| v. | § Court Below—Superior Court |
| | § of the State of Delaware, |
| STATE OF DELAWARE, | § in and for Sussex County |
| | § Cr. ID Nos. 0401018644 |
| Plaintiff Below, | § and 1011014610 |
| Appellee. | § |

Submitted: August 15, 2013

Decided: August 29, 2013

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

ORDER

This 29th day of August 2013, upon consideration of the parties' briefs, their supplemental submissions,¹ and the record below, it appears to the Court that:

(1) The appellant, Joseph Vincent, appeals from his Superior Court sentence for a violation of probation ("VOP"). Vincent's sole issue on appeal is that his sentence violates double jeopardy principles. We find no

¹ The Court requested supplemental filings regarding the expiration date applicable to the sentence in Cr. ID No. 0401018644. The State supplemented the record with evidence of other sentencing orders imposed upon Vincent for prior crimes, which affected the expiration date of his sentence in Cr. ID No. 0401018644.

merit to his contention. Accordingly, we affirm the Superior Court's judgment.

(2) Vincent pled guilty in 2004 to one count of Driving Under the Influence ("DUI") Fourth Offense. In February 2009, Vincent was charged with violating his probation associated with that sentence. The Superior Court sentenced Vincent on the VOP to four years at Level V to be suspended after serving two years for a period of probation. In February 2011, Vincent pled guilty to DUI Fifth Offense. The Superior Court sentenced him on the new conviction to five years at Level V incarceration to be suspended after serving two years for a period of probation. As a result of his new conviction, Vincent was also found guilty of violating the probation associated with his DUI Fourth Offense. The Superior Court sentenced him on the VOP to two years at Level V incarceration to be suspended immediately for probation.

(3) In February 2013, Vincent was charged with violating probation on both his DUI Fourth Offense and DUI Fifth Offense sentences. The Superior Court found Vincent guilty of both VOP charges. For the VOP associated with Vincent's DUI Fourth Offense, the Superior Court sentenced him to two years (with credit for time served) at Level V incarceration with no probation to follow. For the VOP associated with Vincent's DUI Fifth

Offense, the Superior Court sentenced him to two years and six months at Level V incarceration, to be suspended after serving six months for two years at Level III probation. This appeal followed.

(4) In his opening brief on appeal, Vincent contends that when he originally pled guilty to his DUI Fifth Offense, his plea agreement resolved the VOP charge for his DUI Fourth Offense and provided that he would serve one day at Level V incarceration with no probation to follow. In support of this argument, Vincent attaches status sheets from the Department of Correction, which credit Vincent with one day served at Level V on the VOP associated with his DUI Fourth Offense. Thus, Vincent argues that the subsequent sentencing orders relating to his DUI Fourth Offense violate double jeopardy principles because he had already completed serving that sentence.

(5) The record, however, shows that Vincent's contention is factually incorrect. The plea agreement associated with his February 2011 guilty plea reflects, in relevant part, that in exchange for Vincent's agreement to plead guilty to the VOP associated with his DUI Fourth Offense, the State would recommend a sentence of three years at Level V incarceration, to be suspended entirely for one year of probation. The record further reflects that, on February 25, 2011, the Superior Court actually sentenced Vincent on

that VOP to two years at Level V incarceration to be suspended entirely for eighteen months of probation. To the extent that Vincent contends that the plea colloquy reflects a different agreement than the written plea agreement, he has failed to supply the Court with a copy of the transcript of that proceeding.² We thus are unable to review that claim. Accordingly, based on the record before us, we find no merit to Vincent's contention that his February 2013 sentence violated double jeopardy principles because he had completed serving the sentence associated with his conviction for DUI Fourth Offense.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

² *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).