

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|--------------------|---|------------------------------|
| ELTON L. PUMPHREY, | § | |
| | § | |
| Defendant Below- | § | No. 419, 2004 |
| Appellant, | § | |
| | § | Court Below---Superior Court |
| v. | § | of the State of Delaware, |
| | § | in and for Sussex County |
| STATE OF DELAWARE, | § | Cr. A. No. VS00-04-0161-02 |
| | § | |
| Plaintiff Below- | § | |
| Appellee. | § | |

Submitted: May 20, 2005

Decided: July 11, 2005

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

ORDER

This 11th day of July 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Elton L. Pumphrey, filed an appeal from the Superior Court's September 7, 2004 order denying his motion for correction of an illegal sentence pursuant to Superior Court Criminal Rule 35(a). We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In October 2000, Pumphrey was found guilty by a Superior Court jury of Conspiracy in the Second Degree, among other charges. He was sentenced on the conspiracy conviction to 2 years incarceration at Level V, to be suspended for 2 years at Level III probation. In July 2001, Pumphrey was found to have committed

a violation of probation (“VOP”). His probation was revoked and he was sentenced on the conspiracy conviction to 2 years incarceration at Level V, to be suspended after 6 months for 12 months at Level III. In November 2002, Pumphrey again was found to have committed a VOP. His probation again was revoked and he was sentenced on the conspiracy conviction to 17 months incarceration at Level V.

(3) In this appeal, Pumphrey claims that this latter VOP sentence is illegal. Specifically, he argues that, because he was required to serve only 12 months of probation under his July 2001 VOP sentence, he should have been required to serve no more than 12 months at Level V under his November 2002 VOP sentence.

(4) Delaware law provides that, if a VOP is established, the Superior Court may “require the probation violator to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.”¹

(5) In this case, Pumphrey’s original 2-year Level V sentence on his conspiracy conviction was suspended for 2 years at Level III. His sentence following his first VOP was 2 years at Level V, to be suspended after 6 months for

¹ Del. Code Ann. tit. 11, § 4334(c) (2001); *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999).

probation. Following Pumphrey's second VOP, the Superior Court was authorized to impose the entire Level V term that previously had been suspended---that is, 18 months. As such, the Superior Court's sentence of 17 months incarceration at Level V for Pumphrey's second VOP was less than the maximum punishment allowed.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice