

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRYSHAWN NELSON,	§	
	§	No. 668, 2012
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0611018558
Appellee.	§	

Submitted: May 10, 2013

Decided: July 11, 2013

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 11th day of July 2013, upon consideration of the parties' briefs and the Superior Court record, it appears to the Court that:

(1) On July 27, 2007, the appellant, Bryshawn Nelson, was sentenced on a drug conviction to eight years of Level V imprisonment, suspended after three and one-half years for decreasing levels of supervision, including probation. Between October 20, 2011 and September 27, 2012, Nelson was convicted four times of violating probation (VOP) and was resentenced. This appeal is from Nelson's conviction and resentencing on December 13, 2012 for his fifth VOP.

(2) Nelson's fifth VOP was initiated by an administrative warrant filed by his probation officer on November 29, 2012. The administrative warrant alleged that Nelson was found with crack cocaine during a pat down on November 27, 2012. It also alleged that Nelson violated curfew on October 31, 2012, and had not maintained employment, which was required as a condition of probation.

(3) In his opening brief on appeal, Nelson claims that he had inadequate notice of the VOP, and that the "technical" violations with which he was charged should not have triggered a revocation of probation. Nelson requests a reduction of sentence on that basis that the eighteen-month sentence imposed by the Superior Court exceeded the twelve-month sentence recommended by his probation officer.

(4) Nelson's first two claims are without merit. The administrative warrant filed on November 29, 2012, a copy of which is attached to Nelson's opening brief, provided written notice of the VOP.¹ The Superior Court has broad discretionary power when deciding whether or not to revoke probation.²

¹ See *Loper v. State*, 2003 WL 21434899 (Del. June 18, 2003) (concluding that written violation report constituted proper notice of the reasons for the VOP).

² See *Kurzmann v. State*, 903 A.2d 702, 716 (Del. 2006) (citing *Collins v. State*, 897 A.2d 159, 160 (Del. 2006)).

(5) Nelson’s request on appeal for a reduction of sentence is unavailing. The Court considers a timely-filed appeal from the Superior Court’s denial of a motion for reduction of sentence.³ The Court does not consider a request for reduction of sentence in the first instance.⁴ As a general matter, the Superior Court is not obligated to follow a sentencing recommendation made by a probation officer.⁵

(6) The Court’s appellate review of a sentence generally is limited to whether the sentence exceeds the statutory limits.⁶ In this case, the record reflects that Nelson was sentenced on his fourth VOP to three years at Level V suspended immediately for one year of probation. Less than three months later, Nelson was sentenced on his fifth VOP to three years at Level V suspended after eighteen months with no probation to follow. Because the sentence imposed for Nelson’s fifth VOP was well within the balance remaining from the sentence imposed on his fourth VOP, it appears that the sentence imposed for the fifth VOP was within statutory limits.⁷

³ *Weber v. State*, 971 A.2d 135, 160-61 (Del. 2009).

⁴ *See* Del. Const. art. IV, § 11(1)-(4) (conferring jurisdiction on Supreme Court to determine matters of appeal).

⁵ *See Lancaster v. State*, 2010 WL 4851829 (Del. Nov. 29, 2010) (citing *Cruz v. State*, 990 A.2d 409, 417 (Del. 2010)).

⁶ *Mayer v. State*, 604 A.2d 839, 842 (Del. 1992).

⁷ *See* Del. Code Ann. tit. 11, § 4334(c) (Supp. 2013) (providing that “[i]f the violation is established, the court may continue or revoke the probation or suspension of sentence, and may require the probation violator to serve the sentence imposed, or any lesser

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

BY THE COURT:

/s/ Randy J. Holland
Justice

sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed”).