

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT DORN,	§
	§ No. 317, 2003
Defendant Below-	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware,
v.	§ in and for Sussex County
	§ Cr.A. Nos. VK93-07-0148 thru
STATE OF DELAWARE,	§ -0155, and VK93-07-0157 thru
	§ -0163
Plaintiff Below-	§ Cr. ID 93K03608DI
Appellee.	§

Submitted: July 23, 2003

Decided: September 24, 2003

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

ORDER

This 24th day of September 2003, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The defendant-appellant, Robert Dorn, filed this appeal from the Superior Court's denial of his motion for correction of sentence. The State of Delaware has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of Dorn's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that, following his guilty plea, the Superior Court sentenced Dorn in March 1994 on 28 counts of aggravated

harassment. In October 2002, Dorn was charged with his second violation of probation by engaging in further acts of harassment, which resulted in Dorn pleading guilty in Pennsylvania. On January 24, 2003, the Superior Court held a hearing and found Dorn in violation of his probation. The Superior Court resentenced Dorn on 18 of the underlying charges to a total period of three years at Level V incarceration followed by four and a half years of probation.

(3) Dorn did not file an appeal from his VOP sentence. Instead, in April 2003, Dorn filed a motion for correction of sentence. In his motion, Dorn asserted that: (i) the Superior Court failed to give him credit for 63 days for time previously served; (ii) the Superior Court failed to specify beginning and ending dates for each of his VOP sentences; and (iii) the sentencing order incorrectly reflected a four and a half year term of probation when, in fact, the Superior Court at the VOP hearing only imposed three years of probation. The Superior Court rejected Dorn's latter two contentions but modified the January 2003 sentencing order to credit Dorn for 63 days previously served at Level V incarceration. This appeal followed.

(4) Dorn's first argument on appeal is that his VOP sentences are illegal because the Superior Court failed to specify beginning and ending

dates as required by statute.¹ This Court, however, has held that a sentence of imprisonment is not illegal for failing to specify beginning and ending dates as long as the sentencing order sets a fixed term of imprisonment expressed in days, months, and/or years.² Accordingly, the Superior Court properly denied Dorn's motion for correction of sentence on this basis.

(5) Dorn's second argument on appeal is that the written sentencing order did not accurately reflect the sentence that the Superior Court judge orally pronounced following the VOP hearing. We first note that Dorn never filed a direct appeal from the Superior Court's VOP sentence in order to raise this alleged error. More importantly, Dorn failed to request transcript of the VOP hearing in order to support his allegations of error in the present appeal. It is the appellant's burden to produce such portions of the transcript as are necessary to support any allegations of error.³ In the absence of any record evidence to the contrary, we accept the Superior Court's ruling that the sentencing order accurately reflected the sentence pronounced following the VOP hearing. Accordingly, we find no error in the Superior Court's denial of Dorn's motion for correction of sentence.

¹ See DEL. CODE ANN. tit. 11, § 3901(a) (2001). Section 3901(a) provides, in part: "When imprisonment is a part of the sentence, the term shall be fixed, and the time of its commencement and ending specified."

² See *Faircloth v. State*, 522 A.2d 1268, 1270-71 (Del. 1987).

³ *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).

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

BY THE COURT:

/s/ Carolyn Berger
Justice