

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JACKY R. BOCKMAN,	§
	§
Defendant Below-	§ No. 185, 2003
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. VN98-07-1009 thru
Plaintiff Below-	§ 1011
Appellee.	§

Submitted: September 19, 2003
Decided: November 10, 2003

Before **HOLLAND, BERGER** and **STEELE**, Justices

ORDER

This tenth day of November 2003, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Jacky R. Bockman, filed an appeal from the Superior Court’s March 7, 2003 order denying his motion for modification of his violation of probation (“VOP”) sentence pursuant to Superior Court Criminal Rule 35. We find no merit to the appeal. Accordingly, we affirm.

(2) In May 1999, Bockman pleaded guilty to two counts of Robbery in the Second Degree (Cr. A. No. 98-07-1009; Cr. A. No. 98-07-1011) and one count of Misdemeanor Theft (Cr. A. No. 98-07-1010). In

July 1999, he was sentenced on each of the robbery convictions to five years incarceration at Level V, the first sentence to be suspended after two and one-half years for decreasing levels of probation and the second sentence to be suspended after six months for four years of Level III probation. On the theft conviction, he was sentenced to one-year incarceration at Level V, to be suspended for one year at Level II probation. Bockman did not file a direct appeal from his convictions and sentences.

(3) Bockman committed a VOP with respect to the sentences twice in 2001 and once again in 2002. On July 26, 2001, Bockman was sentenced for his first VOP. On the first robbery sentence, he received two years incarceration at Level V, to be suspended after ninety days for twenty-one months at Level III . On the second robbery sentence, four years at Level III was reimposed. On the theft sentence, one year at Level II was reimposed.

(4) On November 20, 2001, Bockman was sentenced for his second VOP. On the first robbery sentence, he received twenty months at Level V, to be suspended immediately for twenty months at the Level IV VOP Center, to be suspended after sixty days for eighteen months at decreasing levels of probation. On the second robbery sentence, four years at Level III was reimposed. On the theft sentence, one year at Level II was reimposed.

(5) On October 7, 2002, he was sentenced for his third VOP to 15 months incarceration at Level V in connection with the first robbery sentence and to four years incarceration at Level V, to be suspended after three years for probation, in connection with the second robbery sentence. He was discharged as unimproved as to the theft sentence.

(6) In this appeal, Brockman claims that the Superior Court improperly imposed a VOP sentence of fifteen months at Level V in connection with his first robbery sentence, since he had already served the five-year Level V sentence originally imposed.

(7) Upon a finding of a VOP, the Superior Court is authorized to reimpose any previously suspended prison term.¹ In reimposing a previously suspended prison term, the Superior Court must credit an inmate with any time he has spent at Level V, including time spent at Level V awaiting space availability at Level IV.² This credit does not, however, include Level V time served on other sentences.³

¹*Ingram v. State*, 567 A.2d 868, 869 (Del. 1989).

²*Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999).

³*Whitten v. State*, Del. Supr., No. 342, 2000, Veasey, C.J. (Jan. 26, 2001).

(8) Because Bockman did not raise his claim in the trial court in the first instance, he is precluded from raising it in this appeal.⁴ Moreover, our review of the record does not lead us to conclude that the claim should be considered in the interest of justice.⁵ There is no factual support for the claim in any case. While Bockman lists the Level V time he claims to have served since his first robbery sentence was imposed, he provides no evidence that the Level V time was served solely in connection with that sentence.⁶ The record reflects that Bockman still has at least fifteen months remaining on his original five-year sentence on the first robbery conviction and that, therefore, the Superior Court's sentence was proper.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

⁴SUPR. CT. R. 8.

⁵*Id.*

⁶It appears that Bockman has served Level V time in connection with a number of other criminal charges.