

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDREW W. SAVAGE,	§
	§
Defendant Below-	§ No. 558, 2008
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0404003549
Plaintiff Below-	§
Appellee.	§

Submitted: April 10, 2009

Decided: June 2, 2009

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

ORDER

This 2nd day of June 2009, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Andrew Savage, filed this appeal from the Superior Court's denial of his motion for postconviction relief. Savage's motion contended that his constitutional rights were violated when the Superior Court sentenced him on a probation violation in October 2007. We find no merit to the issues raised in Savage's opening brief on appeal. Accordingly, we affirm the Superior Court's judgment below.

(2) The record reflects that Savage initially was sentenced in September 2004 after pleading guilty to a charge of second degree assault.

The Superior Court sentenced him to five years at Level V incarceration, to be immediately suspended for two years and three months at Level IV Home Confinement or Work Release, to be suspended after serving three months for two years at Level III probation. Thereafter, Savage was found guilty of violating probation in November 2004 and sentenced to five years at Level V incarceration, to be suspended immediately for five years at the Level IV VOP Center, to be suspended after serving 120 days for two years at Level III probation. In December 2006, another warrant was issued charging Savage with violating the terms of his probation. At his counsel's request, the Superior Court postponed the hearing on the VOP until Savage's new criminal charges were resolved. In October 2007, the Superior Court found Savage in violation of his probation for the second time and sentenced him to five years at Level V incarceration to be suspended after serving four years for one year at Level III probation.

(3) Savage did not appeal that sentence. Instead, he filed several unsuccessful motions seeking a modification of his sentence. In October 2008, Savage filed a motion for postconviction relief raising several related claims that his constitutional rights were violated and the Superior Court committed error when it sentenced him on the VOP charge after his term of

probation had expired. The Superior Court rejected Savage's motion on its merits.

(4) We agree. The underlying premise of Savage's arguments on appeal is that he could not be sentenced for violating probation in October 2007 because his term of probation had expired by that time. Savage's reasoning is incorrect. So long as the probation violation occurs prior to the expiration of the probationary term, it is of no consequence that the violation proceedings and sentencing occur after the expiration of the probationary term.¹ Accordingly, we find no error in the Superior Court's denial of Savage's postconviction motion.

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

BY THE COURT:

/s/ Carolyn Berger
Justice

¹ *Tiller v. State*, 257 A.2d 385, 387 (Del. 1969).