

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GEORGE L. HAMILTON,	§
	§ No. 440, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0708037111
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 29, 2010

Decided: December 17, 2010

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

ORDER

This 17th day of December 2010, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, George L. Hamilton, filed an appeal from the Superior Court’s July 2, 2010 violation of probation (“VOP”) sentencing order. We find no merit to the appeal. Accordingly, we affirm.

(2) The record reflects that, in April 2008, Hamilton pleaded guilty to Theft from a Senior, Criminal Trespass in the Second Degree and Conspiracy in the Second Degree. As part of the plea agreement, the State dismissed additional counts of theft and conspiracy as well as four counts of Forgery in the Second Degree. Hamilton was sentenced on his theft

conviction to 2 years at Level V incarceration, to be suspended after 14 days for the balance of the sentence at Level III probation. On his conspiracy conviction, he was sentenced to 2 years at Level V, to be suspended for 1 year at Level III. On the trespass conviction, he was fined \$50.00. The Superior Court also ordered Hamilton to pay restitution. On October 2, 2008, at the recommendation of TASC, the Superior Court modified its sentencing order to provide that Hamilton would serve his suspended sentence at Level IV Crest rather than Level III probation.

(3) On July 2, 2010, Hamilton was found to have committed a VOP on the grounds that he had been charged in May 2010 with theft of a motor vehicle, he had missed scheduled visits with his probation officer and he had failed to report a change of address to his probation officer. On the theft conviction, Hamilton was re-sentenced to 1 year and 6 months at Level V, to be suspended for 1 year and 6 months at Level IV work release, in turn to be suspended after 6 months for 1 year at Level III probation. On the conspiracy conviction, he was re-sentenced to 2 years at Level V, to be suspended for 1 year at Level I probation. On the trespass conviction, a fine again was imposed.

(4) In this appeal from the Superior Court's VOP sentencing order, Hamilton claims that his VOP sentence is excessive because he successfully

completed the Crest Program, has no arrests for violent crimes, and has no drug or alcohol issues. He contends that his sentence should be modified to Level V time served and half the amount of the ordered restitution.

(5) This Court's appellate review of a Superior Court sentencing order generally is limited solely to whether the sentence exceeds the statutory limits.¹ Once a defendant commits a VOP, the Superior Court has the authority to require him to serve all of the Level V time remaining on his original sentence.² A subsequent VOP sentence may not impose more Level V time than the prior sentence left suspended.³ Hamilton does not dispute that his original sentence was within the statutory limits. Nor does he dispute that his VOP sentences were within the Superior Court's authority to impose. As such, Hamilton offers no valid basis upon which to modify his latest VOP sentences. Therefore, the Superior Court's judgment must be affirmed.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹ *Mayer v. State*, 604 A.2d 839, 842 (Del. 1992).

² *State v. Sloman*, 886 A.2d 1257, 1260 (Del. 2005); Del. Code Ann. tit. 11, §4334(c).

³ *Pavulak v. State*, 880 A.2d 1044, 1045-46 (Del. 2005).