

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL ALBANESE,	§
	§ No. 74, 2011
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0901000541
Plaintiff Below-	§
Appellee.	§

Submitted: April 18, 2011

Decided: June 20, 2011

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

ORDER

This 20th day of June 2011, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Michael Albanese, filed this appeal from his Superior Court sentencing following his third violation of probation (VOP). The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Albanese's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Albanese pled guilty on March 30, 2010 to one count each of Burglary in the Third Degree and Conspiracy in the Second Degree. The Superior Court immediately sentenced him on the burglary charge to

three years at Level V incarceration, with credit for six months previously served, suspended after serving six months at Level V for one year of probation. On the conspiracy charge, the Superior Court sentenced Albanese to two years at Level V incarceration, to be suspended immediately for eighteen months of probation. Thereafter, Albanese was found in violation of his probation on two separate occasions. Neither his first VOP sentence nor his second VOP sentence resulted in Albanese receiving or serving any additional time at Level V incarceration.

(3) On January 1, 2011, the Superior Court sentenced Albanese for his third VOP. On the burglary charge, the Superior Court sentenced Albanese to two years at Level V incarceration, with credit for eight days served, to be suspended after serving six months at Level V for eighteen months at Level IV work release, to be suspended after serving six months at Level IV for one year at Level III probation. On the conspiracy charge, the Superior Court sentenced Albanese to two years at Level V incarceration, to be suspended for eighteen months at Level III probation.

(4) In his opening brief on appeal, Albanese admits that he violated his probation by producing a “dirty” urine sample. He argues, however, that the Superior Court’s sentence is excessive for a technical violation and reflects that the Superior Court judge sentenced him with a closed mind based on false charges that he beat his girlfriend.

(5) It is well settled that, upon finding a defendant has violated probation, the Superior Court is authorized to reimpose any previously suspended prison term.¹ In this case, the Superior Court originally sentenced Albanese to a total period of five years at Level V incarceration for both of his convictions. All of this Level V time was suspended except for six months (plus an additional six months of credit for time served). Accordingly, the Superior Court, after finding Albanese in violation of his probation, could have sentenced Albanese to a total period of four years at Level V incarceration (two years on each charge), which was the Level V time remaining to be served on his two sentences. The six month Level V sentence imposed by the Superior Court was neither excessive nor reflective of a closed mind by the sentencing judge.²

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

BY THE COURT:

/s/ Randy J. Holland
Justice

¹ *Ingram v. State*, 567 A2d 868, 869 (Del. 1989) (citing DEL. CODE ANN. tit. 11, § 4334(c)).

² *See Kurzmann v. State*, 903 A.2d 702, 715 (Del. 2006).