

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DANIEL W. CLITES,	§	
	§	No. 633, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0710009554
Appellee.	§	

Submitted: April 15, 2011

Decided: June 22, 2011

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

O R D E R

This 22nd day of June 2011, upon consideration of the briefs of the parties it appears to the Court that:

(1) On July 28, 2008, the appellant, Daniel W. Clites, pled guilty to Robbery in the Second Degree and was sentenced to five years at Level V suspended after nine months for decreasing levels of supervision. By order dated April 7, 2010, the Superior Court granted Clites' motion for modification of sentence and changed two years that were imposed at Level IV work release to two years imposed at Level II.¹ Also, in the "Notes"

¹ See docket at 16, *State v. Clites*, Del. Super., Cr. ID No. 0710009554 (April 7, 2010) (order modifying sentence).

section of the sentence modification order, the Superior Court provided that “[p]robation may be transferred to Maryland.”²

(2) On September 24, 2010, Clites was charged with violation of probation (VOP). Specifically, the warrant charged that Clites had missed an office visit with his Delaware probation officer, had left Delaware and gone to Maryland without authorization from his probation officer, had failed to notify his probation officer of his change in address, and had violated the curfew established by his probation officer.

(3) After a hearing on September 28, 2010, Clites was found guilty of VOP and was sentenced to ninety days at Level V with the balance of the sentence suspended for Level I restitution only. Clites filed a timely appeal from his VOP conviction and sentence. He did not, however, order a transcript of the VOP hearing.

(4) On appeal, Clites argues that the VOP charges were uncalled for, and that his VOP conviction should be reversed in view of the Superior Court’s April 7, 2010 sentence modification order. Clites also argues that the Superior Court erred when imposing a sentence that was three levels above his current level of supervision.³

² *Id.*

³ Clites does not and cannot argue that the ninety-day sentence exceeded the statutory limits. *But cf.* SENTAC (Delaware Sentencing Accountability Commission) Benchbook

(5) Clites' arguments are unavailing. First, Clites' failure to order a transcript of the VOP hearing precludes the Court from reviewing his claims challenging the VOP conviction and the circumstances under which the sentence was imposed.⁴ Second, because Clites has finished serving the ninety-day sentence, his claims related to the sentence are now moot.⁵

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

BY THE COURT:

/s/ Randy J. Holland
Justice

Violation of Probation Sentencing Policy at 121 (2011) (providing that absent the existence of "aggravating circumstances" when an offender is adjudged guilty of VOP after a hearing and sentenced, "it is presumed that the offender may move up only one SENTAC level from his/her current level").

⁴ *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).

⁵ To the extent Clites contends that the Department of Correction's records do not reflect the April 7, 2010 sentence modification order, Clites will have to bring an appropriate action in the Superior Court to compel the correction of the Department's records. *See, e.g., Ball v. State*, 2000 WL 431574 (Del. Supr.) (affirming Superior Court judgment when appellant invoked wrong procedural measure to compel the correction of his Department of Correction sentence status sheet). *See generally* Del. Code Ann. tit. 10, § 564 (1999) (governing mandamus proceedings in the Superior Court).