

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CLAYTON J. BATSON,	§
	§ No. 136, 2011
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID Nos. 0504000712
	§ 0506010304
Plaintiff Below-	§
Appellee.	§

Submitted: July 19, 2011

Decided: August 15, 2011

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 15th day of August 2011, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Clayton J. Batson, filed an appeal from the Superior Court’s March 3, 2011 violation of probation (“VOP”) sentence. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

¹ Supr. Ct. R. 25(a).

(2) The record before us reflects that Batson pleaded guilty to Attempted Robbery in the First Degree, Assault in the Second Degree and Burglary in the Third Degree in connection with two separate criminal actions. He was sentenced to a total of 21 years of Level V incarceration, to be suspended after 3 years and successful completion of the Key Program for decreasing levels of supervision. Specifically on the attempted robbery conviction, Batson was sentenced to 10 years at Level V, to be suspended after 3 years for 4 years at Level III probation.

(3) On March 3, 2011, the Superior Court found that Batson had committed a VOP for failing to comply with the terms of the Crest Program. He was sentenced to a total of 15 years at Level V, to be suspended for decreasing levels of supervision. Specifically on the attempted robbery conviction, he was sentenced to 7 years at Level V, to be suspended for Level IV Crest, in turn to be suspended following successful completion of the program for 4 years at Level III Crest Aftercare.

(4) In this appeal from the Superior Court's VOP sentence, Batson claims that a) the Superior Court's VOP sentence for attempted robbery violates double jeopardy because he has already completed that sentence; and b) his counsel provided ineffective assistance at the VOP hearing.

(5) There is no factual basis for Batson's claim of a double jeopardy violation with respect to his attempted robbery sentence. Once Batson had

completed his suspended 3-year Level V sentence for attempted robbery and thereafter committed a VOP, the Superior Court had the authority to require him to serve the remainder of the Level V sentence that was originally imposed.² Because Batson had another 7 years remaining on his original sentence for attempted robbery, the Superior Court did not abuse its discretion when it sentenced him to all of that Level V time.

(6) With respect to Batson's second claim of ineffective assistance of counsel, this Court will not review ineffectiveness claims that are asserted for the first time on direct appeal.³ Because the Superior Court did not consider Batson's claim in the first instance, we decline to address it for the first time in these proceedings.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

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

³ *Duross v. State*, 494 A.2d 1265, 1268 (Del. 1985).

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice