

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALTON CANNON,)	
)	
Defendant-Below,)	
Appellant)	No. 75, 2003
)	
)	Court Below—Superior Court
v.)	of the State of Delaware
)	in and for New Castle County
)	Cr. A. No. VN97-1108-02
STATE OF DELAWARE)	
)	
)	
Plaintiff-Below,)	
Appellee)	

Submitted: July 15, 2003
Decided: August 25, 2003

Before **VEASEY**, Chief Justice, **STEELE** and **JACOBS**, Justices

ORDER

This 25th day of August, 2003, upon consideration of the briefs submitted by the parties, it appears to the Court that:

(1) The defendant-appellant, Alton Cannon (“Cannon”), appeals from an Order, entered on January 23, 2003, determining that Cannon had violated his probation, revoking his probation, and reimposing his original sentence. Cannon advances two grounds on his appeal. The first is that the trial court erred by not ordering, *sua sponte*, a contested violation of

probation hearing, because Cannon disputed the charge that he had violated his probation. The second ground is that the trial court erred by not crediting Cannon with the four months he served at the Sussex Violation of Probation (VOP) Center.

(2) Respecting his first contention, it is undisputed that Cannon never advised the trial court that he contested the violation of probation charge. Nor did he request a postponement of the violation of probation hearing so that he could subpoena witnesses, or ever raise his second contention in the trial court. Because Cannon presents these claims for the first time on appeal, they must be reviewed under a standard of plain error.¹

(3) A revocation of probation for violating conditions of probation involves an “exercise of broad discretionary power.”² In this case, Cannon had notice of the violation of probation hearing, which he attended, and he was also afforded the opportunity to speak in open court. The trial court, before ruling, reviewed a report that was submitted by Cannon’s job counselor, describing the circumstances that caused her to feel threatened by Cannon’s behavior. That report, the court found, was competent evidence of a violation of probation. The court found that Cannon had violated his

¹ *Hall v. State*, 2001 WL 1388678 , 784 A.2d 1080 (Del. 2001), citing *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

² *Brown v. State*, 249 A.2d 269, 272 (Del. 1968).

probation, and sentenced him accordingly. In these circumstances, that determination did not constitute error, let alone plain error.

(4) Cannon's second ground for appeal is that the four months he served at the VOP Center should have been credited to him as "time served," because the VOP Center is not, in reality, a Level IV facility, but actually is a Level V prison. The record shows that Cannon did serve four months at the Sussex VOP Center, and that he is currently on Level III or Level II probation in accordance with his sentence. Nothing in the record shows the contrary. As of this time, Cannon is not currently being housed in a Level V facility, because his two year sentence at Level V has been suspended. Therefore, Cannon's claim that the four months served at the Sussex VOP should be credited as Level V time, is premature. That claim will not become ripe (if ever) unless and until Cannon commits a new violation of probation that causes the Level V portion of his sentence to be reinstated.

NOW, THEREFORE, IT IS ORDERED THAT the Order of the Superior Court finding appellant to have violated his probation, and reinstating the appellant's original sentence, is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice