

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CARLTON W. GIBBS,	§
	§
Defendant Below,	§ No. 1, 2015
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID No. 92S05785DI
Plaintiff Below,	§
Appellee.	§

Submitted: July 30, 2015

Decided: September 9, 2015

Before **STRINE**, Chief Justice; **VAUGHN**, and **SEITZ**, Justices.

**ORDER**

This 9<sup>th</sup> day of September 2015, upon consideration of the appellant’s opening brief, the appellee’s motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Carlton W. Gibbs, filed this appeal from the Superior Court’s December 19, 2014 order sentencing him for his violation of probation (“VOP”). The State of Delaware has moved to affirm the Superior Court’s judgment on the ground that it is manifest on the face of Gibbs’ opening brief that the appeal is without merit.<sup>1</sup> We agree and affirm.

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<sup>1</sup> Supr. Ct. R. 25(a).

(2) The record reflects that, in April 1993, Gibbs pled guilty to Attempted Murder in the First Degree and Assault in the Second Degree. Gibbs was sentenced to twenty-five years of Level V incarceration, suspended after fifteen years for ten years of Level II probation. On April 12, 2012, the Superior Court found that Gibbs committed his first VOP. Gibbs was sentenced to five years of Level V incarceration (with credit for forty-three days served), suspended for decreasing levels of supervision.

(3) In September 2013, a *capias* issued for Gibbs' second VOP. The VOP report alleged that Gibbs had violated his probation by failing to report to his probation officer in June, July, and August, 2013, discontinuing his substance abuse treatment, and testing positive for alcohol. The *capias* was returned in April 2014 after Gibbs was arrested for Disregarding a Police Officer's Signal, Leaving the Scene of a Property Collision, and other related charges ("Criminal ID No. 1404012907").

(4) After a hearing on May 16, 2014, the Superior Court found that Gibbs had violated his probation. Sentencing was deferred until resolution of Gibbs' outstanding charges in Criminal ID No. 1404012907. On December 19, 2014, Gibbs was sentenced for his VOP to five years of Level V incarceration (with credit for forty-three days served), suspended after two years and successful completion of the Level V Key Program, followed by one year of Level IV

Residential Substance Abuse Treatment, suspended upon successful completion for thirty months of Level III Aftercare.<sup>2</sup> This appeal followed.

(5) In his opening brief, Gibbs does not challenge the Superior Court's VOP finding, but does argue that the VOP sentence is disproportionate to the VOP. This Court's appellate review of a sentence is extremely limited and generally ends upon a determination that the sentence is within statutory limits.<sup>3</sup> Once Gibbs committed a VOP, the Superior Court could impose any period of incarceration up to and including the balance of the Level V time remaining on Gibbs' sentence.<sup>4</sup> The Level V sentence imposed by the Superior Court after Gibbs' VOP—five years of Level V incarceration (with credit for forty-three days served), suspended after two years and successful completion of the Level V Key Program, followed by one year of Level IV Residential Substance Abuse Treatment, suspended upon successful completion for thirty months of Level III Aftercare—did not exceed the Level V time previously suspended and was within statutory limits.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED and the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Collins J. Seitz, Jr.  
Justice

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<sup>2</sup> Gibbs was also sentenced in Criminal ID No. 1404012907. The Superior Court's judgment in that case is currently on appeal in *Gibbs v. State*, No. 15, 2015.

<sup>3</sup> *Kurzmann v. State*, 903 A.2d 702, 714 (Del. 2006).

<sup>4</sup> 11 *Del. C.* § 4334(c); *Pavulak v. State*, 880 A.2d 1044, 1046 (Del. 2005).