

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDRE McDOUGAL,	§	
	§	No. 461, 2018
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware
v.	§	
	§	Cr. ID No. 0607023450 (N)
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: October 1, 2018
Decided: December 31, 2018

Before **VALIHURA, VAUGHN**, and **SEITZ**, Justices.

ORDER

(1) Andre McDougal filed this appeal from the Superior Court’s order dated August 21, 2018, denying his motion for correction of a sentence imposed on March 2, 2011 for a violation of probation (“VOP”). McDougal claims that he is entitled to relief from the VOP sentence because he did not receive due process at the VOP hearing.¹ The State has moved to affirm the Superior Court’s judgment on

¹ This is not the first time McDougal has claimed that he was denied due process at the VOP hearing. See *McDougal v. State*, 2011 WL 4921345, at *2 (Del. Oct. 17, 2011) (affirming VOP conviction on direct appeal); *McDougal v. Wesley*, 2014 WL 6693787, at *3–4 (D. Del. Nov. 24, 2014) (denying federal habeas corpus petition); *State v. McDougal*, 2015 WL 3883058, at *6–7 (Del. Super. Comm’r June 22, 2015) (recommending summary dismissal of motion for postconviction relief) adopted by *State v. McDougal*, Cr. ID No. 0607023450 (Del. Super. Oct. 2, 2015).

the ground that it is manifest on the face of McDougal's opening brief that the appeal is without merit.² We agree and affirm.

(2) Superior Court Criminal Rule 35 governs motions seeking the correction of an illegal sentence and motions seeking relief from a sentence imposed in an illegal manner.³ In this case, the transcript of McDougal's sentencing reveals no illegality. Contrary to McDougal's claims on appeal, when imposing sentence for the VOP, the Superior Court properly considered the seriousness of the underlying offense for which McDougal was originally convicted and the seriousness of the charges for which McDougal was arrested and awaiting trial.⁴

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

BY THE COURT:

/s/ James T. Vaughn, Jr.
Justice

² Del. Sup. Ct. R. 25(a).

³ Del. Super. Ct. Crim. R. 35(a), (b).

⁴ See *Diaz v. State*, 2014 WL 1017490 (Del. Mar. 13, 2014) (affirming judgment after finding no illegality in a VOP sentence imposing the balance of Level V remaining on the defendant's original sentence when the sentencing judge noted the seriousness of the underlying offenses for which the defendant was originally convicted and the seriousness of the subsequent crime for which the defendant was charged).