

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CARL J. AHEARN,	§	
	§	No. 46, 2001
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County in Cr.
	§	A. Nos. VS97-08-0403-04,
STATE OF DELAWARE,	§	0407-04.
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9708016376

Submitted: May 9, 2001

Decided: June 14, 2001

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices.

**ORDER**

This 14<sup>TH</sup> day of June 2001, 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) On October 21, 1997, Carl J. Ahearn pleaded guilty, pursuant to Superior Court Criminal Rule 11(e)(1)(c), to Possession of Marijuana within 1,000 Feet of a School and Maintaining a Vehicle for Keeping Controlled Substances. In exchange for Ahearn's guilty plea, the State entered a *nolle prosequi* on seven related charges. The Superior Court sentenced Ahearn to a total of six years at Level V, suspended for nine months at a Level IV

residential substance abuse treatment program, suspended upon successful completion of the program, for four and one-half years of probation.

(2) Since his original conviction and sentencing in 1997, Ahearn has been convicted four times of violation of probation (“VOP”).<sup>1</sup> Most recently, on January 8, 2001, Ahearn was adjudged guilty of VOP and was sentenced to a total of four and one-half years at Level V, suspended upon successful completion of the Key Program for 12 months at the Level IV Crest Program, suspended upon successful completion of the Crest Program, for two years at Level III Aftercare. This appeal followed.

(3) In his opening brief on appeal, Ahearn contends that he has not received credit for time previously served at Level V on these charges. Ahearn also contends that his January 8 sentence, which provides for programs at Levels V and IV, is “unfair” because he has not had the opportunity to participate in outpatient treatment. According to Ahearn, his entry into a previously court-ordered outpatient treatment program was delayed because of space limitations. Ahearn states that by the time the

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<sup>1</sup>*State v. Ahearn*, Del. Super., Cr.A. No. IS97-08-0403, Graves, J. (April 12, 1999); *State v. Ahearn*, Del. Super., Cr.A. No. IS97-08-0403, Graves, J. (Oct. 15, 1999); *State v. Ahearn*, Del. Super., Cr.A. No. IS9-08-0403, Graves, J. (Oct. 27, 2000); *State v. Ahearn*, Del. Supr., Cr.A. No. IS97-08-0403, Graves, J. (Jan. 8, 2001).

program was able to accept his enrollment, he had relapsed. Ahearn contends that he “deserves a chance to get outpatient treatment” and that, because of pressing medical problems, he needs the support provided by outpatient treatment.

(4) Ahearn’s claim that he would be better served by an outpatient treatment program, was considered and rejected at the January 8 VOP hearing. In view of Ahearn’s prior history of probation violation and his admission during the January 8 hearing that he had used cocaine while on probation, the Superior Court was well within its discretion when determining that the Level V Key Program and Level IV Crest Program were more suitable levels of supervision for Ahearn.

(5) Ahearn claims on appeal that he has not received credit for time previously served at Level V on these charges. Ahearn did not raise this claim in the Superior Court, and he has provided no factual support for the claim on appeal. Because Ahearn has not established plain error, and none is apparent from the record, we decline to address the claim for the first time on appeal.<sup>2</sup>

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<sup>2</sup>Supr. Ct. R. 8.

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

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:

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s/Joseph T. Walsh  
Justice