

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SCOTT MELODY,	§
	§
Defendant Below-	§ No. 661, 2002
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr.A. No. IN96-02-0894
	§ Cr. ID. 9601012687
Plaintiff Below-	§
Appellee.	§

Submitted: April 25, 2003

Decided: June 9, 2003

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

**ORDER**

This 9<sup>th</sup> day of June 2003, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The defendant-appellant, Scott Melody, filed this appeal from an order of the Superior Court, dated November 15, 2002, which approved the Department of Correction's determination that Melody should complete a twelve to eighteen-month drug treatment program. Melody's opening brief raises two discernible claims: (i) Melody's violation of probation sentence was illegal because the Superior Court's sentencing order failed to assign a beginning and ending date for Melody's drug treatment; and (ii) the Superior Court violated double jeopardy principles and Melody's due process rights when it approved the

Department's decision without holding a hearing. We find no merit to Melody's contentions. Accordingly, we affirm.

(2) The record reflects that Melody pled guilty in 1996 to one count of first degree robbery. The Superior Court sentenced him on that charge to ten years at Level V incarceration, to be suspended after serving four years for six years at decreasing levels of supervision. In June 2002, the Superior Court found Melody in violation of the terms of several probationary sentences, including the probationary sentence on his first degree robbery conviction. With respect to the first degree robbery sentence, the Superior Court found Melody in violation of probation and sentenced him, effective May 23, 2002, to five years at Level V incarceration, to be suspended upon successful completion of the Key or Greentree treatment programs for three years at Level IV Crest Program, to be suspended upon successful completion of Crest for two years at Level III probation.

(3) Melody appealed his VOP adjudication and sentence. We affirmed the Superior Court's judgment.<sup>1</sup> Melody later appealed two Superior Court orders denying motions to modify his VOP sentence. We affirmed the Superior Court's judgments on appeal.<sup>2</sup>

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<sup>1</sup> *Melody v. State*, Del. Supr., No. 373, 2002, Holland, J. (Oct. 16, 2002).

<sup>2</sup> *Melody v. State*, Del. Supr., Nos. 559, 2002 and 629, 2002, Holland, J (Mar. 31, 2002).

(4) In his present appeal, Melody again challenges the Superior Court's VOP sentence. Melody appears to assert that the VOP sentence is illegal because it did not establish a beginning and ending date for the completion of Melody's drug treatment. This Court has reviewed Melody's VOP sentence on two prior occasions and has found his sentence to be authorized by law and within the Superior Court's broad discretion. We will not revisit this issue simply because Melody has refined his claim.<sup>3</sup>

(5) To the extent Melody challenges the Superior Court's approval of the Department of Correction's determination that Melody should complete a twelve to eighteen-month drug treatment program, we find no merit to Melody's contentions. The Superior Court sentenced Melody to five years in prison, effective May 23, 2002, to be suspended upon successful completion of drug treatment at Key or Greentree for three years of decreasing supervision. It was well within the Superior Court's authority to impose drug treatment as a condition of Melody's sentence.<sup>4</sup> It is the Department of Correction's responsibility, however, to determine Melody's particular treatment needs and to evaluate his successful completion of treatment.<sup>5</sup> The Department of Correction thus was not required in this case to seek the Superior Court's approval in order to place Melody

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<sup>3</sup> See *Riley v. State*, 585 A.2d 719, 721 (Del. 1990).

<sup>4</sup> DEL. CODE ANN. tit. 11, § 4204(c)(8) (2001).

<sup>5</sup> DEL. CODE ANN. tit. 11, §§ 6504, 6531 (2001).

in a treatment program for longer than six months.<sup>6</sup> Accordingly, contrary to Melody's contention, the Superior Court did not err in failing to hold a hearing before approving the Department of Correction's discretionary, administrative decision.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Justice

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<sup>6</sup> See *Winward v. Taylor*, Del. Supr., No. 454, 2001, Holland, J. (Dec. 12, 2001) (holding that an "inmate's participation in a particular drug treatment program rests within the discretion of the Department of Correction. . .")