

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ARISTOTLE JOHNSON,	§
	§ No. 691, 2002
Defendant Below,	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware,
v.	§ in and for Sussex County
	§ Cr.A. No. VS93-08-0283-01;
STATE OF DELAWARE,	§ 0282-01; 0281-01; and 0284-01
	§ Cr. I.D. # 93S0336801
Plaintiff Below,	§
Appellee	§

Submitted: May 20, 2003

Decided: June 3, 2003

Before **HOLLAND**, **BERGER** and **STEELE**, Justices.

ORDER

This third day of June 2003, it appears to the Court that:

1) This is an appeal from a final judgment of the Superior Court by the defendant-appellant, Aristotle Johnson. Johnson contends that the Superior Court abused its discretion and exhibited a closed mind when it sentenced him to be incarcerated for three years at Level V followed by six months at Level III probation, after Johnson admitted violating the conditions of his probation.

2) On August 16, 1993, Johnson was indicted on Murder in the First Degree, Assault in the Second Degree, and two counts of Possession of a Deadly Weapon During the Commission of a Felony in Cr. A. Nos. S93-

08-0280 through 0283. That same day, he was indicted on two counts of Delivery of Crack Cocaine and two counts of Maintaining a Dwelling for Keeping Controlled Substances in Cr. A. Nos. S-93-0284 through 0287. On February 4, 1994, Johnson pleaded guilty to Assault in the Second Degree, Possession of a Deadly Weapon During the Commission of a Felony, Carrying a Concealed Deadly Weapon, and Delivery of Cocaine. Pursuant to his Rule 11 (e)(1)(C) plea agreement, Johnson was sentenced to a total of eleven years at Level V, after serving seven years at Level V, the balance of the sentence was suspended for four years of Level II probation.

3) On September 27, 2002, Johnson was arrested on new charges, including Robbery in the First Degree, Assault in the First Degree, Burglary in the First Degree, Aggravated Menacing, Reckless Endangering, Possession of Cocaine, Maintaining a Dwelling, Possession of a Firearm During the Commission of a Felony, Possession of a Firearm by a Person Prohibited, and Possession of Marijuana.

4) On November 19, 2002, a Fast Track contested violation of probation hearing was held in Sussex County Superior Court. Through his attorney, Johnson admitted that he had tested positive for cocaine and marijuana in violation of his probation. Johnson informed the Superior Court, however, that he had paid his fines on a regular basis, and rarely had

police contact during the time he was on probation from August 2000 until his arrest on September 27, 2002. The Superior Court found Johnson guilty of violating his probation and sentenced him to three years at Level V supervision, followed by six months at Level III probation.

5) On appeal, Johnson argues that the sentence he received for admitting to a “dirty urine” was unjust. According to Johnson, the Superior Court exhibited a closed mind when it reimposed his suspended sentence without considering the nature of the violation or the fact that Johnson had not been previously arrested while out on probation.

6) Appellate review of a sentencing order is limited.¹ It is well settled that, upon finding a violation of probation, the Superior Court is authorized to reimpose any previously suspended prison term.² Reimposing the suspended portion of the original sentence upon a subsequent finding of a violation credits a defendant with any time the defendant already has served on the unsuspended portion of the original sentence.³

7) In this case, the Superior Court originally sentenced Johnson to eleven years at Level V, suspended after seven years for Level II probation.

¹ See *Siple v. State*, 701 A.2d 79, 83 (Del. 1997); *Maves v. State*, 604 A.2d 839, 842-43 (Del. 1992).

² See *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999); *Ingram v. State*, 567 A.2d 868, 869 (Del. 1989); Del. Code Ann. tit. 11, § 4334(c).

³ See *Harris v. State*, 2001 WL 257797 (Del. Supr. at *1).

Upon Johnson's subsequent admission to violating his probation, the Superior Court was authorized to reimpose the suspended portion of Johnson's original sentence, i.e., four years. Thus, the reimposition of three years incarceration at Johnson's VOP hearing did not exceed the maximum punishment allowed.⁴

8) Since Johnson's violation of probation sentence neither exceeded the statutory maximum limits nor his original sentence, Johnson contends instead that the Superior Court exhibited a closed mind. In this case, the probation officer recommended that, in the event the Superior Court found a violation of probation, Johnson be sentenced to four years at Level V. The sentence imposed in this case was actually less prison time than was recommended by the probation officer because the Superior Court determined that Johnson had already served two of his original sentences.⁵

9) Johnson admitted that his conduct constituted a violation of the terms and conditions of his probation.⁶ As a result, the Superior Court was entitled to find Johnson guilty of violating probation, and to reimpose the

⁴ See *Ross v. State*, 2002 WL 1316250 (Del. Supr. at *2). The Superior Court also imposed an additional six months at Level III probation to follow the period of incarceration as required by law. See Del. Code Ann. tit. 11, § 4204(1).

⁵ See *Jackson v. State*, 2002 WL 31084260 (Del. Supr. at *1) (seven-year sentence for probation violation not excessive, considering probation officer recommended a ten-year sentence).

⁶ *Brown v. State*, 249 A.2d 269, 272 (Del. 1968).

previously suspended portion of Johnson's original sentences.⁷ Other than citing the relative harshness of his sentence compared to the nature of his violation, however, Johnson points to no other evidence of a closed mind on the judge's part. Accordingly, we hold that Johnson has not met his burden of demonstrating either a closed mind on the part of the judge or any abuse of discretion.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

⁷ See *Gamble v. State*, 728 A.2d at 1172.