

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WINFORD X. PIPER,	§
	§
Defendant Below-	§ No. 340, 2012
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID Nos. 0603001297,
Plaintiff Below-	§ 0605010603 and 0706024283
Appellee.	§

Submitted: August 21, 2012
Decided: October 10, 2012

Before **HOLLAND, BERGER, JACOBS**, Justices.

ORDER

This 10th day of October 2012, upon consideration of the appellant’s opening brief, the State’s motion to affirm, and the record below, it appears to the Court that:

(1) The defendant-appellant, Winford Piper, filed this appeal from the Superior Court’s sentence for a violation of probation (VOP). The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Piper’s opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Piper pled guilty on June 5, 2006 to four counts of Burglary in the Third Degree, which had been charged pursuant to two

different indictments.¹ The Superior Court immediately sentenced him to a total period of twelve years at Level V incarceration, with credit for 96 days served, to be suspended immediately for one year at Level III Aftercare. In July 2007, Piper pled guilty to Burglary in the Third Degree, Misdemeanor Theft, and Attempted Unlawful Use of a Credit Card. The Superior Court immediately sentence Piper in that case to a total period of five years at Level V incarceration, with credit for 23 days served, to be suspended after serving three months in jail for one year at Level II probation.

(3) On June 8, 2012, the Superior Court, in a consolidated hearing, found Piper guilty of his fourth VOP in Cr. ID Nos. 0603001297 and 0605010603 and of his third VOP in Cr. ID No. 0706024283. The Superior Court sentenced Piper to a total period of fourteen years and one month at Level V incarceration, to be suspended entirely for 30 days at the Level IV VOP Center, followed by one year at Level IV Work Release, followed by one year at Level III probation and three years at Level I probation (restitution only).

(4) In his opening brief on appeal, Piper argues that the Superior Court's sentence fails to credit him with three weeks he spent in jail awaiting his VOP hearing. Piper also contends that the State unfairly brought up the issue of

¹ Those case numbers are 0603001297 and 0605010603, respectively.

restitution at the VOP hearing even though he was not violated for the failure to pay restitution. Finally, Piper appears to argue that the sentence was excessive.

(5) With respect to his sentencing claim, the Superior Court was authorized to impose any period of incarceration up to and including the balance of the Level V time remaining to be served on Piper's original sentences.² In this case, the Superior Court suspended all of the Level V time remaining on Piper's sentences and ordered him to serve 30 days at Level IV VOP Center followed by one year at Level IV Work Release followed by probation. This sentence was well within statutory limits, was not excessive, and in no way reflects a closed mind by the sentencing judge.³ Moreover, the Superior Court indicated in its order that the sentence as structured accounted for all time that Piper previously served at Level V. Piper has offered no evidence that his credit time was improperly calculated.

(6) Piper's remaining claim is that the State improperly raised the issue of restitution even though Piper was not violated for the failure to pay restitution. We are unable to review this claim, however, because Piper failed to order and provide this Court with a copy of the transcript from his VOP hearing.⁴ As this Court has held many times, the failure to include adequate transcripts of the proceedings, as

² 11 Del. C. § 4334(c) (2007).

³ See *Weston v. State*, 832 A.2d 742, 746 (Del. 2003).

⁴ See *Hawkins v. State*, 2010 WL 3341578 (Del. Aug. 25, 2010) (holding that failure to provide transcript of VOP hearing precludes review of argument on appeal).

required by the rules of the Court, precludes appellate review of a defendant's claims of error in the proceedings below.⁵

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

BY THE COURT:

/s/ Carolyn Berger
Justice

⁵ *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).