

IN THE SUPREME COURT OF THE STATE OF DELAWARE

OMAR D. DORMAN,	§
	§
Defendant Below-	§ No. 46, 2000
Appellant,	§
	§
v.	§ Court Below–Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. 97-01-1752; 1753;
Plaintiff Below-	§ 1758
Appellee.	§ 97-01-0720; 0723; §
	0726

Submitted: January 11, 2001

Decided: March 6, 2001

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

**ORDER**

This 6<sup>th</sup> day of March 2001, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Omar D. Dorman, filed this appeal from the Superior Court’s finding of a violation of probation (“VOP”). We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In this appeal, Dorman claims that: 1) he was not brought before the Superior Court without unreasonable delay<sup>1</sup>; 2) he was denied the minimum

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<sup>1</sup>Super. Ct. Crim. R. 32.1(a).

requirements of due process at his VOP hearing;<sup>2</sup> 3) he was subjected to double jeopardy; and 4) his sentence for the VOP was illegal.

(3) On February 26, 1999, while serving the Level IV portion of sentences on convictions for burglary and felony theft, Dorman failed to return to the Sussex Work Release Center after being given a one-hour pass to go to the bank. On November 23, 1999, Dorman was apprehended and arrested on several charges, including escape after conviction. Following a bail hearing in Justice of the Peace Court, Dorman was committed to the Sussex Correctional Institution (“SCI”) in default of secured bail.

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<sup>2</sup>Super. Ct. Crim. R. 32.1(a) (A)-(E).

(4) On December 3, 1999, the Superior Court conducted a second bail hearing by video and ordered that Dorman continue to be held at SCI without bail pending a fast track VOP hearing on December 21, 1999. The record reflects that Dorman was sent a copy of the Superior Court's December 3, 1999 commitment order, which noted that a VOP hearing had been scheduled for December 21, 1999 at 9:00 a.m.<sup>3</sup> At the VOP hearing, Dorman was sentenced to 90 days incarceration at Level V on his first burglary conviction,<sup>4</sup> with his sentences on his two theft convictions re-imposed to run consecutive to that sentence as probationary sentences.<sup>5</sup> The sentences for Dorman's three additional burglary convictions were discharged as unimproved.<sup>6</sup> The Superior Court subsequently modified its sentencing order on July 12, 2000, by providing that

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<sup>3</sup>The VOP hearing actually took place on December 28, 1999.

<sup>4</sup>Cr. A. No. 97-01-1752.

<sup>5</sup>Cr. A. Nos. 97-01-0720 and 0726.

<sup>6</sup>Cr. A. Nos. 97-01-0723, 1753 and 1758.

Dorman's sentences would run consecutive to other, unrelated sentences and by suspending the incarcerative portion after 60 days.

(5) Dorman's claim that he was not brought before Superior Court without unreasonable delay is without factual support. Dorman was arrested on November 23, 1999 and, following two bail hearings between November 23 and December 3, 1999, was brought before the Superior Court for his VOP hearing on December 28, 1999. Thus, as is required, Dorman was brought before a magistrate for the purpose of fixing bail without unreasonable delay and, when not released on bail, was afforded a prompt hearing before a judge of the Superior Court.<sup>7</sup>

(6) Dorman's claim that he was not afforded the minimum requirements of due process at his VOP hearing is without merit. The record indicates that Dorman was given notice of the VOP hearing at his second bail hearing, as reflected in the Superior Court's December 3, 1999 commitment order. Moreover, there was never any question that the basis for the alleged VOP was Dorman's disappearance from the Sussex Work Release Center for approximately 10 months. The transcript of the VOP hearing reflects that

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<sup>7</sup>Super. Ct. Crim. R. 32.1.

Dorman did not contest the allegations against him, but readily admitted he had committed a VOP. Thus, even if Dorman did not receive the Superior Court's December 3, 1999 commitment order, there was no prejudice to him. Dorman's contention that his due process rights were violated because he was not given an opportunity to retain his own counsel is equally unavailing. The transcript of the VOP hearing reflects that a public defender was present to represent Dorman. There was no prejudice to Dorman even if he did not have notice that he could retain his own counsel since he did not object to proceeding with the hearing and readily admitted to the VOP.

(7) Dorman's claim that he was subjected to double jeopardy because the charge of escape after conviction constituted the basis for a separate Superior Court conviction in addition to the finding of a VOP is without merit. There is an important distinction between prosecution for a criminal offense and revocation of probation in a previously-imposed sentence.<sup>8</sup> When Dorman violated the terms of his probation, he received deferred punishment for his convictions on charges of burglary and felony theft, but was not prosecuted

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<sup>8</sup>*United States v. Clark*, 984 F. 2d 319, 320 (9<sup>th</sup> Cir. 1993).

directly for the violation of probation. Double jeopardy is not implicated in these circumstances.<sup>9</sup>

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<sup>9</sup>*Id.*

(8) Dorman's final claim that the Superior Court imposed an illegal sentence for the VOP is also without merit. Dorman appears to contend that the Superior Court illegally sentenced him for the VOP based upon a burglary charge that it discharged as unimproved. This is incorrect. Dorman's sentence for the VOP was based upon the first of his four burglary convictions, for which he received 2 years incarceration at Level V, to be suspended after 1 year for probation. Thus, there was as much as one additional year of incarceration at Level V available to the Superior Court judge when he imposed sentence for Dorman's VOP.<sup>10</sup>

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

BY THE COURT:

s/ Joseph T. Walsh  
Justice

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<sup>10</sup>*Ingram v. State*, Del. Supr., 567 A.2d 868, 869-70 (1989).

