

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SIRWILL LAZARUS,	§
	§ No. 41, 2013
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0509007292
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 2, 2013  
Decided: September 9, 2013

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

**ORDER**

This 9<sup>th</sup> day of September 2013, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Sirwill Lazarus, filed an appeal from the Superior Court’s January 10, 2013 violation of probation (“VOP”) sentencing order. We find no merit to the appeal. Accordingly, we affirm.

(2) The record before us reflects that, in October 2005, Lazarus was indicted on charges of Robbery in the First Degree, Assault in the First Degree, Possession of a Deadly Weapon During the Commission of a Felony, Possession With Intent to Deliver Cocaine, Possession of Cocaine Within 300 Feet of a Church, Assault in the Third Degree, Criminal Mischief and Resisting Arrest. In January 2006, Lazarus pleaded guilty to Robbery in the First Degree, Assault in the Second Degree and

Possession of Cocaine Within 300 Feet of a Church. The remainder of the charges were dismissed. Lazarus was sentenced on the robbery conviction to 3 years incarceration at Level V. On the assault conviction, he was sentenced to 5 years at Level V, to be suspended for decreasing levels of supervision. On the drug possession conviction, he was sentenced to 2 years at Level V, to be suspended for 18 months at Level III probation.

(3) On February 19, 2009, following a hearing, Lazarus was found to have committed a VOP. He was sentenced to 5 years at Level V, to be suspended for 18 months at Level III on the assault conviction. The Superior Court discharged Lazarus as unimproved on the drug possession conviction. On August 27, 2009, Lazarus was found to have committed a second VOP. He was sentenced to 5 years at Level V, to be suspended after 60 days for probation.

(4) Lazarus was found not to have committed a VOP at his third VOP hearing on June 10, 2010. At that time, the Superior Court re-sentenced him to 3 years at Level V, to be suspended for 3 years at Level I, restitution only. On August 30, 2012, Lazarus was found to have committed another VOP. He was sentenced to 3 years at Level V, to be suspended for 6 months at Level IV Work Release, to be followed by 1 year at Level III probation. On January 10, 2013, Lazarus was found to have committed yet another VOP while housed at the Level IV Plummer Community Corrections Center and sentenced him to 2 years and 6 months at Level V, to be suspended after 18 months for Level I probation. This appeal followed.

(5) In this appeal, Lazarus asserts several claims that may fairly be summarized as follows: a) the administrative warrant for the VOP was factually inaccurate; b) tobacco-related violations are usually handled without charging offenders with a VOP; and c) the Superior Court judge who presided over the VOP hearing had a closed mind.

(6) Lazarus's first claim is that the administrative warrant for the VOP was factually inaccurate. The record before us reflects otherwise. The warrant adequately placed Lazarus on notice that he had been caught smoking a cigarette off-limits with 2 other offenders at the Plummer Center, which was forbidden. Moreover, the warrant notes that, when given an order from an officer not to move, Lazarus attempted to throw the cigarette into a bathroom stall. While Lazarus asserts that he was not the one with the cigarettes, the transcript of the VOP hearing reflects that he admitted that he was smoking. We, therefore, conclude that Lazarus's first claim is without merit.

(7) Lazarus's second claim is that he should not have been charged with a VOP because "technical" violations are usually handled by the Department of Correction ("DOC"). He cites to Del. Code Ann. tit. 11, §4334(d) in support of his argument. While that statute gives DOC the authority to resolve technical violations administratively, it does not require the DOC to do so. Moreover, once a defendant commits a VOP, the Superior Court has the authority to require him to serve the full

amount of Level V time remaining on his original sentence.<sup>1</sup> Lazarus does not claim, nor is there record support for a claim, that the Superior Court sentenced him to Level V time in excess of that remaining on his original Level V sentence. As such, we conclude that Lazarus's second claim is without merit.

(8) Lazarus's third claim is that the Superior Court judge had a "closed mind" when he presided over the VOP hearing. A judge imposes sentence with a "closed mind" when the sentence is based upon a preconceived bias without consideration of the nature of the offense or the character of the defendant.<sup>2</sup> The transcript of the VOP hearing does not reflect that the Superior Court judge sentenced Lazarus with a "closed mind." The judge stated that Lazarus had violated his probation on several different occasions and that, by his conduct, Lazarus was sending a message that he wanted to serve his sentence. The statement by the judge was no more than an accurate reflection of Lazarus's actions. As such, we find no evidence of impropriety on the part of the judge and conclude that Lazarus's third claim is, likewise, without merit.

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

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice

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<sup>1</sup> *Pavulak v. State*, 880 A.2d 1044, 1045-46 (Del. 2005) (citing Del. Code Ann. tit. 11, §4334(c)).

<sup>2</sup> *Cruz v. State*, 990 A.2d 409, 416 (Del. 2010).