

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BILLY G. JOHNSON,	§
	§
Defendant Below-	§ No. 319, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr.A. No. VS97-10-0164-01
Plaintiff Below-	§
Appellee.	§

Submitted: October 30, 2000

Decided: December 13, 2000

Before **VEASEY**, Chief Justice, **BERGER** and **STEELE**, Justices

ORDER

This 13th day of December 2000, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Billy G. Johnson, filed an appeal from the June 21, 2000 order of the Superior Court denying his motion for a reduction of sentence imposed following a violation of probation (“VOP”) hearing. We find no merit to the appeal. Accordingly, we **AFFIRM**.

(2) In this appeal, Johnson claims that the Superior Court erred, first, in failing to appoint counsel to represent him at the VOP hearing and,

second, in exceeding the Truth in Sentencing (“TIS”) guidelines in imposing sentence.¹

(3) On May 26, 2000, the Superior Court found Johnson guilty of a probation violation based upon his admission that he violated his probation by testing positive for illegal drugs on two separate occasions. The Superior Court sentenced Johnson to 2 years and 3 months incarceration at Level V, with credit for time served, to be suspended for 15 months Level III Aftercare upon successful completion of the Key Program. Johnson then filed a motion for reduction of sentence, which the Superior Court denied.

(4) Johnson’s contention that the Superior Court should have appointed an attorney to represent him at the VOP hearing is without merit. The United States Supreme Court has held that “counsel should be provided in cases where the probationer raises ‘a timely and colorable claim (i) that he has not committed the alleged violation of the conditions upon which he is at liberty; or (ii) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, and that the reasons are complex or otherwise difficult to develop or present.’”² In this case, Johnson admitted to the violation and offered no reasons either justifying or mitigating the violation. Under these circumstances, the Superior Court was not obligated to appoint counsel to represent him.

¹Johnson asserts these claims in his reply brief. Additional claims made by Johnson in his opening brief are pending before this Court in a related matter, *Johnson v. State*, Del. Supr., No. 305, 2000, and will not be addressed here.

²*Jones v. State*, Del. Supr., 560 A.2d 1056, 1058 (1989) (quoting *Gagnon v. Scarpelli*, 411 U.S. 778, 790 (1973)).

(5) Johnson's claim that his sentence should be reduced because it violates the TIS guidelines is also meritless. Under Delaware law, a defendant has no legal or constitutional right to appeal a statutorily authorized sentence on the basis that it does not conform to the TIS guidelines.³

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

BY THE COURT:

/s/ Myron T. Steele
Justice

³*Mayes v. State*, Del. Supr., 604 A.2d 839, 845 (1992). Johnson does not claim that his sentence was not statutorily authorized.