

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAPHUS ELEY,	§	
	§	
Defendant Below-	§	No. 576, 2003
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for Sussex County
STATE OF DELAWARE,	§	Cr. A. Nos. VS99-07-0027; 0028;
	§	0031; 0032; 0033
Plaintiff Below-	§	
Appellee.	§	

Submitted: December 24, 2003
Decided: March 17, 2004

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

ORDER

This 17th day of March 2004, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Raphus Eley, filed an appeal from the Superior Court's November 18, 2003 sentencing order. The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Eley's opening brief that the appeal is without merit.¹ We agree and AFFIRM.

¹ Supr. Ct. R. 25(a).

(2) In October 1999, Eley was found guilty by a Superior Court jury of two counts of Burglary in the Third Degree, one count of Assault in the Third Degree and two counts of Misdemeanor Theft. He was sentenced on one burglary count to 3 years incarceration at Level V, to be suspended after successful completion of the Key Program and Level IV Residential Substance Abuse Treatment Program for Level III probation. Eley received suspended sentences and probation on the remaining counts. Eley's convictions and sentences were affirmed by this Court on direct appeal.²

(3) In November 2002, Eley was found to have committed a violation of probation ("VOP"). His probation was revoked and a 6-year Level V sentence was imposed, to be suspended after 1 year for decreasing levels of probation. In November 2003, Eley sought to modify his sentence claiming that he was being held illegally at Level V while awaiting entry into Level IV Home Confinement and requested placement at Level III. By letter dated November 18, 2003, the Superior Court noted that the VOP sentencing order erroneously had failed to state at what level he should be held pending placement at Level IV and also informed Eley that he could seek placement into a Level IV program other than Home Confinement. The Superior Court then modified Eley's VOP sentencing order to

² *Eley v. State*, Del. Supr., No. 137, 2000, Steele, J. (Dec. 20, 2000).

reflect that he should be held at Level V pending placement at Level IV and denied his request to be placed at Level III.

(4) In this appeal, Eley claims that the Superior Court improperly modified his VOP sentence to state explicitly that he should be held at Level V pending placement at Level IV. He contends that this modification was an intentional deviation from the sentence announced orally at the sentencing hearing and not merely a correction of a clerical error. He requests that his sentence be changed to reflect the Superior Court's oral sentencing order.

(5) There is no transcript of the November 2002 VOP hearing in the record and, therefore, no factual support for Eley's claim. Moreover, the Superior Court is authorized to correct errors in the record resulting from oversight or omission,³ which appears to be what occurred in this case. We find no evidence in the record before us of any abuse of discretion on the part of the Superior Court judge in ordering Eley to be held at Level V pending placement at Level IV.

(6) It is manifest on the face of Eley's opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

³ Super. Ct. Crim. R. 36; *Guyer v. State*, 453 A.2d 462, 464 (Del. 1982).

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice