

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ISRAEL PAGE,	§
	§
Defendant Below-	§ No. 438, 2012
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 1009018674
Plaintiff Below-	§
Appellee.	§

Submitted: October 22, 2012
Decided: December 4, 2012

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

ORDER

This 4th day of December 2012, after careful consideration of appellant's opening brief, the State's motion to affirm, and the record below, it appear to the Court that:

(1) The appellant, Israel Page, filed this appeal following his Superior Court sentencing for a violation of probation (VOP). The State of Delaware has filed a motion to affirm the Superior Court's judgment on the ground that it is manifest on the face of Page's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Page pled guilty on February 9, 2011 to Driving Under the Influence (third offense). The Superior Court immediately

sentenced him to two years at Level V incarceration, with credit for three days previously served, to be suspended after serving ninety days at Level V for eighteen months at Level III probation. After Page was charged with violating his probation, the Superior Court held a VOP hearing on May 10, 2012. The Superior Court found that Page had violated probation but deferred sentencing pending an evaluation by the Treatment Access Center (TASC) to determine if Page was an appropriate candidate for mental health court. On July 19, 2012, after Page chose not to participate in mental health court, the Superior Court sentenced Page, effective immediately, to two years at Level V incarceration, with credit for 169 days previously served, to be suspended upon successful completion of the Greentree Program for one year at Level IV residential drug treatment, to be suspended upon successful completion of drug treatment for six months at Level III Aftercare.

(3) In his opening brief on appeal, Page contends that he only declined to participate in the mental health court because he believed that his homelessness would make him an ineligible candidate for any TASC program. Page asserts that due to his hearing and vision impairment, he did not realize that the Superior Court had sentenced him to the Greentree Program (with its continuum of care) until he was returned to prison following the VOP hearing. According to Page, he does not have enough time remaining to be served on his sentence in order to complete the Greentree Program. He also contends that his mental health issues will prevent his

successful completion of the program. Page argues that the Superior Court's sentence is unfair because he will be incarcerated until September 9, 2013 and then be required to spend six months in the Level IV Crest Program followed by six months in Level III Crest Aftercare. Page contends that this exceeds the time remaining to be served on his original sentence.

(4) We find no support for Page's claims. Once a defendant is found to have violated the terms of his probation, the Superior Court may sentence the defendant to serve all of the Level V time remaining to be served on the original sentence or to any lesser sentence.¹ The State argues in this case that Page has not established that his VOP sentence to the "short term" Greentree Program will exceed the one year plus 196 days of Level V time remaining to be served on his original sentence.

(5) We agree. At this point, how much time Page will spend at Level V or Level IV in order to serve his VOP sentence is dependent upon his successful completion of the programs to which the Superior Court has sentenced him. Page has offered no evidence in support of his contention that he will not be able to participate in the Greentree Program either because of his mental health issues or because of the limited time remaining on his sentence. Accordingly, because it is possible that Page could serve his VOP sentence without exceeding the one year

¹ *State v. Sloman*, 886 A.2d 1257, 1260 (Del. 2005).

plus 196 days remaining to be served on his original sentence, we cannot conclude that the Superior Court's VOP sentence was excessive.

(6) Moreover, to the extent Page argues that the VOP proceedings were unfair because of his vision and hearing impairment or because of his mental health issues, we have no adequate basis to review these claims. As the appealing party, the burden was on Page to provide the Court with such portions of the transcript as are necessary to give the Court an adequate context to review the claim of error.² In the absence of any record in this case, appellate review of Page's claims is precluded.³

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

² See *Slater v. State*, 606 A.2d 1334, 1336 (Del. 1992).

³ *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).