

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT BROWN,	§	
	§	No. 455, 2012
Defendant-Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	Cr. ID No. 1201003552
	§	
Plaintiff-Below,	§	
Appellee.	§	

Submitted: September 20, 2012
Decided: December 17, 2012

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

ORDER

This 17th day of December 2012, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm, it appears to the Court that:

(1) On February 29, 2012, Robert Brown, the defendant-below, pled guilty to one count of Possession of a Firearm by a Person Prohibited. The Superior Court sentenced Brown to eight years of incarceration, suspended for eighteen months of probation. On June 14, 2012, Brown was charged with a violation of probation (“VOP”) for having allegedly committed several new criminal offenses and for having possessed illegal drugs. After

a contested VOP hearing on August 8, 2012, the Superior Court found Brown guilty of VOP and sentenced him to eight years of incarceration suspended after three years for one year of probation. This appeal followed.

(2) In his opening brief on appeal, Brown claims that at the contested VOP hearing the Superior Court erroneously adjudged him guilty on the basis of a dismissed motor vehicle charge. Brown's claim is not subject to appellate review, however, in the absence of a transcript of the VOP hearing, which Brown has failed to provide as the rules of this Court require.¹

(3) Brown next claims that the three-year VOP sentence imposed by the Superior Court was excessive, because he was charged with only one instance of violating curfew. Brown's claim is unsupported by the record and is otherwise meritless.

(4) After adjudging a defendant guilty of VOP, the Superior Court has the authority to sentence the defendant to any period of incarceration up to and including the balance of incarceration remaining on the original sentence.² In this case, after finding Brown guilty of VOP, the Superior Court properly sentenced Brown to three of the eight years of incarceration that were suspended on his original sentence.

¹ *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).

² DEL. CODE ANN. tit. 11, § 4334(c) (2007).

(5) The appellee, the State of Delaware, has also moved to affirm on the ground that it is manifest on the face of Brown's opening brief that his appeal is without merit. Having carefully considered the parties' positions on appeal and the available record, we agree with the State and affirm the Superior Court judgment.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED and the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice