

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMIE L. MIFFLIN,	§	
	§	No. 456, 2012
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court of
	§	the State of Delaware in and for
v.	§	Sussex County
	§	
STATE OF DELAWARE,	§	Cr. ID No. 1101000090
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: December 17, 2012

Decided: February 25, 2013

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

ORDER

This 25th day of February 2013, upon consideration of the appellant’s opening brief and the appellee’s “motion to affirm violation of probation and remand for re-sentencing,” it appears to the Court that:

(1) On May 4, 2011, the appellant, Jamie L. Mifflin, pled guilty to a fifth offense of Driving Under the Influence and was sentenced to three years at Level V incarceration, suspended after nine months for one year at Level IV Crest, suspended after successful completion for eighteen months of Level III aftercare. As part of his sentence, Mifflin was credited for 124 days that he had already served.

(2) In July 2012, Mifflin was charged with a violation of probation (“VOP”). At Mifflin’s August 2, 2012 VOP hearing, he admitted the violation and was sentenced to two years and ten months at Level V, suspended after successful completion of both the Level V Key Program and a Level IV residential substance abuse treatment program for one year of Level III aftercare. The August 2, 2012 sentencing order provides that: “[t]he level 5 time imposed in today’s sentence takes into consideration all time previously served.”

(3) Mifflin appeals his August 2, 2012 sentence. Mifflin claims that the sentence exceeds the SENTAC guidelines, and suggests that the Superior Court sentenced him with a “closed mind.” Mifflin also contends that he has not been credited for all time previously served.

(4) Mifflin’s SENTAC claim is without merit. It is well settled that the SENTAC guidelines are not binding on the Superior Court.¹ There is also no basis in the record to support a claim that the Superior Court sentenced Mifflin with a “closed mind.” Indeed, the VOP hearing transcript reflects that the trial judge sentenced Mifflin after identifying aggravating circumstances, such as his posing a danger to himself and to the community,

¹ *Lloyd v. State*, 2012 WL 3775861, at *2 (Del. Aug. 29, 2012) (citing *Wynn v. State*, 23 A.3d 145, 150 (Del. 2011)).

his admitted and extensive history of alcohol addiction, and his continuing use of alcohol.

(5) As for Mifflin's other claim on appeal, it appears that the State shares Mifflin's concern that he has not received credit for all time previously served at Level V. The State estimates that Mifflin "should have been given credit for a total of approximately 409 days" against the original, three-year sentence imposed in May 2011. Based on the State's factual assertions and acknowledgement of plain error, we remand this matter to the Superior Court with instructions to issue a new sentencing order crediting Mifflin for all the time he previously served on his original sentence.²

NOW, THEREFORE, IT IS HEREBY ORDERED that the State's motion to affirm is GRANTED. This matter is REMANDED to the Superior Court for further proceedings consistent with this Order. Jurisdiction is not retained. The mandate shall issue forthwith.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

² See *Nickerson v. State*, 36 A.3d 350, 2012 WL 252402, at *2 (Del. Jan. 26, 2012) (TABLE).