

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PAUL PARKS,	§
	§
Defendant Below-	§ No. 463, 2013
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID Nos. 1201018400 and
Plaintiff Below-	§ 1202008849
Appellee.	§

Submitted: November 6, 2013

Decided: November 19, 2013

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

ORDER

This 19th day of November 2013, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The defendant-appellant, Paul Parks, filed this appeal from the Superior Court's sentence for a violation of probation (VOP). The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Parks' opening brief that his appeal is without merit. We affirm in part but remand for correction of an error in Parks' VOP sentence.

(2) The record reflects that Parks pled guilty on February 23, 2012 to one count each of Burglary in the Third Degree, Receiving Stolen Property (Felony),

and Failure to Follow a Police Signal. The Superior Court sentenced Parks on the burglary charge to three years at Level V incarceration to be suspended after serving nine months for one year at Level III probation. On the stolen property charge, Parks was sentenced to two years at Level V incarceration to be suspended immediately for one year at Level I probation. Parks received a \$200 fine for the remaining charge. In November 2012, the Superior Court deferred Parks' probation until his release from a Pennsylvania prison. In July 2013, Parks was charged with a VOP. The Superior Court held a hearing on August 22, 2013. Parks was found in violation and was sentenced on the burglary charge, effective July 11, 2013, to two years and six months at Level V incarceration, to be suspended after serving eighteen months for six months at Level IV supervision (DOC discretion). He was discharged as unimproved from the probation associated with the stolen property conviction. This appeal followed.

(3) In his single-page opening brief on appeal, Parks asserts that he was given a "questionable amount of Level 5" time. He also suggests that the Level IV portion of his sentence is unnecessary because he is currently participating in a Level V drug treatment program and the Level IV portion of his VOP sentence, which gives the DOC discretion to determine his Level IV program placement, will inevitably result in his placement in another drug treatment program.

(4) In sentencing a defendant for a probation violation, the Superior Court is authorized to impose any period of incarceration up to and including the balance

of the Level V time remaining to be served on the original sentence.¹ In this case, the Superior Court originally sentenced Parks to three years at Level V incarceration to be suspended after serving nine months. Thus, after finding that Parks had violated his probation, the Superior Court was authorized to reimpose the two years and three months remaining on Parks' original sentence. In this case, the Superior Court imposed two years and six months at Level V, although it suspended all but 18 months of the sentence. Accordingly, this matter must be remanded to the Superior Court to reduce the Level V portion of Parks' VOP sentence to two years and three months, which was the Level V time remaining to be served from the original sentence. In all other respects, we conclude that the sentence was legal, was not excessive, and does not reflect a closed mind by the sentencing judge.²

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED in part and REMANDED for correction of a legal error in Parks' VOP sentence.

BY THE COURT:

/s/ Carolyn Berger
Justice

¹ 11 Del. C. § 4334(c) (2007).

² See *Weston v. State*, 832 A.2d 742, 746 (Del. 2003).