

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARVIN L. HALL,	§
	§ No. 48, 2013
Defendant Below,	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§
	§ Cr. ID 0208017239
Plaintiff Below,	§
Appellee.	§

Submitted: March 15, 2013

Decided: April 9, 2013

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

**ORDER**

This 9<sup>th</sup> day of April 2013, upon consideration of the appellant’s opening brief, the State’s motion to affirm, the parties’ supplemental submissions, and the record below, it appears to the Court that:

(1) The appellant, Marvin Hall, filed appeals from a Superior Court sentencing order for Hall’s second violation of probation (“VOP”). The State moves to affirm the order below on the ground that it is manifest on the face of Hall’s opening brief that his appeal is without merit. After initial consideration, we directed the State to file a supplemental memorandum, with supporting documentation, addressing Hall’s argument that his initial sentence had been served in its entirety at the time he was charged with his

second VOP. After considering the parties' arguments and the record before us, we find no merit to Hall's argument on appeal. Accordingly, we affirm the Superior Court's judgment.

(2) On October 28, 2002, Hall pled guilty to one count each of Trafficking in Cocaine and Conspiracy in the Second Degree. The Superior Court immediately sentenced him on the Trafficking charge to eight years at Level V imprisonment to be suspended after serving three years for decreasing levels of supervision. The Superior Court sentenced Hall on the Conspiracy charge to two years at Level V incarceration to be suspended immediately for probation.

(3) On January 3, 2007, Hall was charged with violating his probation. While that VOP charge was pending, Hall was arrested on new criminal charges. On July 25, 2007, Hall pled guilty to one count of Possession With Intent to Deliver Cocaine ("PWIDC"). On November 16, 2007, the Superior Court declared Hall to be a habitual offender and sentenced him on the PWIDC charge to five years at Level V incarceration. That same day, the Superior Court found Hall guilty of violating his probation. The Superior Court sentenced Hall on the VOP associated with the Trafficking charge to four years at Level V incarceration, to be suspended immediately for four years at Level IV work release or home

confinement, to be suspended after serving six months at Level IV for eighteen months at Level III. On the VOP associated with the Conspiracy charge, the Superior Court sentenced Hall to two years at Level V incarceration, to be suspended immediately for one year at Level III probation.

(4) While serving his sentence for PWIDC, the Board of Parole recommended to the Superior Court that it modify Hall's sentence.<sup>1</sup> On October 25, 2010, the Superior Court modified Hall's PWIDC sentence by suspending his five-year prison sentence, effective immediately. Hall was released in January 2011 and then began serving the suspended portion of his 2007 VOP sentence.

(5) On December 17, 2012, Hall was again charged with violating probation for failing to report a motor vehicle violation and for testing positive for marijuana use. On January 4, 2013, the Superior Court found Hall guilty of the VOP and sentenced him on the Trafficking charge to three years at Level V, to be suspended after serving six months and discharged as unimproved from further probation. The Superior Court discharged Hall as unimproved on the Conspiracy charge. This appeal followed.

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<sup>1</sup> See DEL. CODE ANN. tit.11, § 4217 (2007).

(6) Hall's sole contention on appeal is that he served his original 2002 sentence in its entirety, and that the Superior Court's recent VOP sentence, therefore, violates principles of double jeopardy. After a review of the State's supplemental documentation, we conclude that Hall's contention is factually incorrect.

(7) Hall was not released from custody on his PWIDC conviction until January 2011. Thus, Hall did not begin serving the two-year suspended portion of his 2007 VOP sentence until January 2011. Under the terms of his sentence, Hall was to remain on probation until January 2013. Accordingly, Hall remained on probation in December 2012, when he was charged with his second VOP. We therefore find no merit to Hall's contention that his 2013 VOP sentence violated double jeopardy principles because he had completely served the underlying sentence.

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

BY THE COURT:

/s/ Jack B. Jacobs  
Justice