

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STANLEY B. SULECKI,	§
	§ No. 496, 2012
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 1012013250
	§
Plaintiff Below-	§
Appellee.	§

Submitted: March 7, 2013

Decided: April 3, 2013

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

ORDER

This 3rd day of April 2013, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Stanley B. Sulecki, filed an appeal from the Superior Court’s August 7, 2012 violation of probation (“VOP”) sentencing order. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

¹ Supr. Ct. R. 25(a).

(2) The record before us reflects that, in February 2011, Sulecki pleaded guilty to his seventh offense of Driving Under the Influence (“DUI”). He was sentenced to 5 years of Level V incarceration, with credit for 65 days previously served, to be suspended after 1 year and successful completion of the Tempo program for 6 months Level IV Home Confinement, to be followed by 18 months of Level III probation.

(3) Following a hearing on August 7, 2012, Sulecki was found to have violated his probation by testing positive for alcohol and marijuana. The Superior Court sentenced Sulecki on the VOP to 4 years at Level V, with credit for 52 days served, to be suspended upon successful completion of the Key program for Level IV Crest, to be followed by 18 months of Level III Crest Aftercare, with a TAD (transdermal continuous alcohol monitoring device) bracelet.

(4) In his appeal from the Superior Court’s VOP sentence, Sulecki claims that a) the sentencing judge impermissibly relied on his past behavior to determine his current treatment needs; b) the sentencing judge was biased against him and sentenced him with a closed mind; and c) his Level V sentence exceeded the SENTAC recommendation that an offender move up only one sentencing level upon a finding of a VOP.

(5) Sulecki’s first claim is that the sentencing judge impermissibly relied on his past behavior to determine his current treatment needs. We disagree. To the

contrary, it was reasonable for the sentencing judge to rely on Sulecki's past history to determine an appropriate sentence. Sulecki's continuing pattern of alcohol and drug use provided more than an adequate basis for the imposition of Level V time as well as the Key/Crest programs. In the absence of any abuse of discretion on the part of the Superior Court in sentencing Sulecki, we conclude that his first claim is without merit.

(6) Sulecki's second claim is that the sentencing judge was biased against him and sentenced him with a closed mind. A judge imposes sentence with a closed mind when the sentence is based upon a pre-conceived bias without consideration of the nature of the offense or the character of the defendant.² The transcript of the VOP hearing in this case reflects that the judge permitted both Sulecki's mother and employer to speak on his behalf. The judge also recited in detail Sulecki's repeated screenings showing alcohol and drugs in his system as well as his seven citations for DUI. There was more than a sufficient basis for the judge to impose a Level V sentence, with the requirement of completion of the Key/Crest programs. We, therefore, conclude that Sulecki's second claim also is without merit.

(7) Sulecki's third claim is that his Level V sentence exceeds the SENTAC recommendation that an offender move up only one sentencing level

² *Cruz v. State*, 990 A.2d 409, 416 (Del. 2010).

upon a finding of a VOP. It is well-settled that the SENTAC guidelines are voluntary and non-binding.³ A defendant has no legal or constitutional right to appeal a statutorily-authorized sentence simply because it does not conform to the sentencing guidelines established by the Sentencing Accountability Commission.⁴ We, therefore, conclude that Sulecki's third claim, too, is without merit.

(8) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

³ *Mayes v. State*, 604 A.2d 839, 845 (Del. 1992).

⁴ *Id.*