

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GLENN A. HEARN,	§
	§
Defendant Below-	§ No. 521, 2011
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 0601000174
Plaintiff Below-	§
Appellee.	§

Submitted: November 4, 2011
Decided: December 21, 2011

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

ORDER

This 21st day of December 2011, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The defendant-appellant, Glenn Hearn, filed this appeal from the Superior Court's sentence for his sixth 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 Hearn's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Hearn pled guilty in May 2006 to one count of driving under the influence (fourth offense). The Superior Court immediately sentenced him to five years at Level V incarceration, with credit for 113 days

previously served, to be suspended after serving six months for one year at Level III probation. In December 2006, Hearn's probationary sentence was deferred until he completed serving a Level IV Work Release sentence, which he received in an unrelated case. From 2006 until September 2011, Hearn was found guilty of violating his probation on five separate occasions.

(3) In July 2011, an administrative warrant was filed charging Hearn with his sixth VOP. Hearn and a codefendant had been arrested on July 22 and charged with theft of services after leaving a restaurant in Sussex County without paying the bill. The administrative warrant charged that Hearn had been intoxicated and disorderly upon his arrest. He was charged with violating two conditions of his probation because he was arrested on a new criminal charge and because he violated the zero tolerance condition for drug and alcohol use. On September 16, 2011, the Superior Court held a hearing and found Hearn in violation of his probation for the sixth time. The Superior Court sentenced him to one year at Level V incarceration to be suspended for ten months at Level IV Residential Substance Abuse Treatment and, following the completion of treatment, to nine months of Aftercare. Hearn now appeals.

(4) Hearn enumerates ten issues in his opening brief on appeal. He contends that the Superior Court's VOP finding should be "overruled" because: (i) Hearn was not provided with the police report prior to the hearing; (ii) the police

did not read him his Miranda rights; (iii) there is an inconsistency between the hearing transcript and the police report; (iv) the trial judge had a conflict of interest because he patronized the restaurant where Hearn was arrested; (v) the manager of the restaurant unfairly tried to persuade the judge to find against Hearn; (vi) Hearn's witness was not available to testify on his behalf; (vii) the underlying criminal charge against him was dismissed; (viii) appropriate questions were never asked of the witnesses; (ix) no tangible, physical evidence was presented against him at the hearing; and (x) Hearn's appointed counsel was ineffective.

(5) This Court will not review ineffective assistance of counsel claims for the first time on appeal.¹ Accordingly, we do not consider that claim here. Furthermore, there is no legal merit to Hearn's claim that he could not be found guilty of a VOP because the underlying criminal charge against him had been dismissed. The Superior Court has authority to revoke a probationer's sentence based on the probationer's conduct leading to new criminal charges notwithstanding the later dismissal of the formal charges.²

(6) With respect to his remaining claims, Hearn failed to order and provide this Court with a copy of the transcript from his VOP hearing. Thus, there is no basis upon which the Court can review his claims that he was denied due process

¹ *Foster v. State*, 2009 WL 1456992 (Del. May 26, 2009).

² *Hawkins v. State*, 2010 WL 3341578 (Del. Aug. 25, 2010); *Cruz v. State*, 990 A.2d 409, 414 (Del. 2010).

or that other errors occurred at the VOP hearing.³ As the Court has held many times, the failure to include adequate transcripts of the proceedings, as required by the rules of the Court, precludes appellate review of a defendant's claims of error in the proceedings below.⁴

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

³ See *Hawkins v. State*, 2010 WL 3341578 (Del. Aug. 25, 2010) (holding that failure to provide transcript of VOP hearing precludes review of argument on appeal).

⁴ *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).