

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYRONE J. PIPKIN,	§	
	§	
Defendant Below-	§	No. 245, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. ID No. 0109010953
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: August 27, 2004
Decided: October 26, 2004

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 26th day of October 2004, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Tyrone J. Pipkin, filed an appeal from the Superior Court's May 11, 2004 order denying his motion for sentence modification pursuant to Superior Court Criminal Rule 35. We find no merit to the appeal. Accordingly, we affirm.

(2) In February 2002, Pipkin pleaded guilty to one count of Burglary in the Third Degree. He was sentenced to 3 years incarceration at Level V to be suspended after 4 months for 32 months of Level IV work release, in turn to be suspended after 6 months for 26 months at Level III supervision.

(3) In June 2002, Pipkin was found by the Superior Court to have committed a violation of probation (“VOP”) in connection with his Level IV probation. His probation was revoked and he was sentenced to 32 months of Level V incarceration, to be suspended for 2 months at the Level IV VOP Center, followed by 30 months of Level III supervision.

(4) In January 2004, Pipkin again was found to have committed a VOP. His probation was revoked and he was sentenced to 32 months of Level V incarceration, to be suspended for the Level IV Crest Program, in turn to be suspended, upon successful completion of the program, for the balance of the sentence to be served at Level III Aftercare. Pipkin did not appeal either the finding of a VOP or the VOP sentence.

(5) In this appeal from the Superior Court’s denial of his Rule 35 motion, Pipkin claims that his due process rights were violated at his January 2004 VOP hearing. As grounds for this claim, Pipkin alleges that: a) the judge who imposed his VOP sentence did not consider all the evidence; b) he was not given the opportunity to present evidence in his own behalf; c) the judge failed to appoint an attorney to represent him; d) his VOP sentence was not imposed by the original sentencing judge; and e) the VOP was found solely on the basis of hearsay.

(6) Rather than filing a direct appeal to this Court from the finding of a VOP, Pipkin instead chose to file a motion for sentence modification pursuant to Rule 35. However, Pipkin may not use the instant appeal from the Superior Court's denial of his Rule 35 motion to collaterally attack the merits of his VOP conviction.¹ We would be unable to review the merits of Pipkin's due process claim in any case, since Pipkin has failed to include a copy of the relevant pages of the VOP hearing transcript in support of his claims.²

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

BY THE COURT:

/s/ Randy J. Holland
Justice

¹ *Fisher v. State*, Del. Supr., No. 603, 2002, Walsh, J. (Mar. 19, 2003).

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