

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARSHA SWANSON,	§
	§ No. 611, 2012D
Defendant Below,	§
Appellant,	§ Court Below–Superior Court of
	§ the State of Delaware, in and for
v.	§ New Castle County
	§
STATE OF DELAWARE,	§ Cr. ID No. 1008002303
	§
Plaintiff Below,	§
Appellee.	§

Submitted: January 8, 2013
Decided: March 20, 2013

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

ORDER

This 20th day of March 2013, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm, it appears to the Court that:

(1) On February 28, 2011, the appellant, Marsha Swanson, pled guilty in the Superior Court to Robbery in the Second Degree and was sentenced to five years at Level V suspended after one year for decreasing levels of supervision. As a special condition of Swanson’s sentence, the Superior Court ordered that she “follow recommendation[s] for [substance abuse] treatment, counseling and screening,” and imposed a zero tolerance policy.

(2) On March 22, 2012, Swanson was charged with violation of probation (“VOP”) for having tested positive for marijuana. On April 24, 2012, the Superior Court adjudged Swanson guilty of VOP and sentenced her to five years at Level V suspended after successful completion of Level III Gateway for one year at Level III.

(3) On May 3, 2012, Swanson was charged with a second VOP for having failed to report to probation and substance abuse treatment as directed, and for having violated the zero tolerance policy of her sentence. A *capias* issued on May 14, 2012. On November 7, 2012, the Superior Court adjudged Swanson guilty of VOP and sentenced her to four years at Level V suspended after successful completion of Level V Key Village and Level IV Crest for one year at Level III. This appeal followed.

(4) On appeal, Swanson challenges the November 7, 2012 VOP sentence on the basis that the Superior Court should have imposed only one year at Level V, *i.e.*, 25% of the four years remaining on her sentence. Swanson’s claim appears to arise from a Delaware Sentencing Accountability Commission (“SENTAC”) guideline, which provides that “the sentence for violation of probation should be UP TO 25% of the statutory maximum.”¹

¹ See Delaware Sentencing Accountability Commission Benchbook at 135 (2012).

(5) Assuming that the SENTAC guideline is applicable to this case, Swanson's claim is unpersuasive. It is within the Superior Court's discretion to deviate from the SENTAC guidelines when the circumstances justify a deviation.²

(6) This Court's review of a Superior Court sentencing order generally is limited to whether the sentence exceeds the statutory limits.³ In this case, Swanson does not claim, and the record does not reflect, that the original sentence imposed on February 28, 2011 was outside of the statutory limits, or that the second VOP sentence imposed on November 7, 2012 exceeded the balance remaining from the first VOP sentence imposed on April 24, 2012.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

² *Siple v. State*, 701 A.2d 79, 83 (Del. 1997).

³ *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).