

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAY A. REVEL,	§	
	§	No. 234, 2005
Defendant Below,	§	
Appellant,	§	Court Below--Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County in Cr. A.
	§	Nos. S97-03-0076I and S00-
STATE OF DELAWARE,	§	03-0275I, 0282.
	§	
Plaintiff Below,	§	Def. ID Nos. 9702009875
Appellee.	§	0002014354

Submitted: June 20, 2005

Decided: September 16, 2005

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

ORDER

This 16th day of September 2005, 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 appellant, Ray A. Revel, filed an appeal from the Superior Court's order dated May 23, 2005, denying his motion for correction of sentence. The appellee, State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and affirm.

(2) Revel has a long history of criminal convictions and related adjudications of violation of probation (VOP) in Delaware. In 1996, Revel pleaded guilty in the Superior Court and was sentenced on charges of Possession of Burglary Tools and Criminal Mischief.¹ In 1997, Revel pleaded guilty in the Superior Court and was sentenced on a charge of Burglary in the Third Degree.² In August 1997, Revel pleaded guilty and was sentenced on a charge of Driving Under the Influence (DUI).³ One year later, Revel pleaded guilty and was sentenced on another charge of DUI.⁴ In September 1998, Revel pleaded guilty and was sentenced on charges of Possession/Use of a Controlled Substance and Resisting Arrest.⁵

¹*State v. Revel*, Del. Super., ID No. 9606015927, Graves, J. (Nov. 22, 1996) (ORDER). Thereafter, Revel was adjudged guilty of VOP and sentenced in May 1997, June 1997, and September 1998. In December 1999, Revel was adjudged guilty of VOP and remained subject to the previous sentence imposed.

²*State v. Revel*, Del. Super., ID No. 9702009875, Graves, J. (June 20, 1997) (ORDER). Revel's sentence was amended in March 1998. He was adjudged guilty of VOP in December 1999 and remained subject to the previous sentence imposed.

³*State v. Revel*, Del. Super., ID No. 9708000002, Graves, J. (Aug. 8, 1997) (ORDER). Revel was adjudged guilty of VOP in December 1999 and remained subject to the previous sentence imposed.

⁴*State v. Revel*, Del. Super., ID No. 9806008658, Lee, J. (Sept. 11, 1998) (ORDER). Revel's sentence was amended in July 1999 and modified in September 1999 and October 1999. In December 1999, Revel was adjudged guilty of VOP and remained subject to the previous sentence imposed.

⁵*State v. Revel*, Del. Super., ID No. 9808019100, Graves, J. (Aug. 28, 1998) (ORDER). In December 1999, Revel was adjudged guilty of VOP and remained subject to the previous sentence imposed.

(3) In March 2000, Revel was adjudged guilty of VOP in each of the above-referenced cases. In the third degree burglary and the two DUI cases (“DUI/burglary”), the Superior Court sentenced Revel to a total of six and one-half years at Level V, suspended after one year for one year at Level IV work release, followed by thirty months at Level III. In the possession of burglary tools and possession/use of a controlled substance cases, the Superior Court discharged Revel as unimproved from the VOP sentences that he was serving at the time in those cases.

(4) In September 2000, Revel pleaded guilty on charges of DUI and Escape in the Third Degree (“DUI/escape”) and was sentenced to a total of six years at Level V, suspended after nine months for one year at a Level IV residential substance abuse treatment program.⁶ In September 2001, Revel was adjudged guilty of VOP and was resentenced. In January 2002, Revel was again adjudged guilty of VOP and was sentenced to a total of four years and ten months at Level V.

(5) In May 2005, Revel filed a motion for correction of sentence pursuant to Superior Court Criminal Rule 35(a). Revel filed the motion when he realized that he would be required to complete the balance of the March

⁶*State v. Revel*, Del. Super., ID No. 0002014354, Stokes, J. (Sept. 7, 2000) (ORDER).

2000 VOP sentence in the DUI/burglary cases (*i.e.*, one year at Level IV work release, followed by thirty months at Level III) after completing the Level V sentence imposed at the January 2002 VOP proceeding in the DUI/escape case. Revel argued that it was a violation of due process to require him to serve the balance of the DUI/burglary VOP sentence, and that the Superior Court should have discharged that sentence upon Revel's subsequent adjudication of VOP in the DUI/escape case. Revel also argued that he was entitled to be discharged as unimproved from the balance of the DUI/burglary VOP sentence because he is physically incapable of completing the requirements of Level IV work release.

(6) On appeal from the Superior Court's May 23, 2005 denial of his motion for correction of sentence, Revel reiterates the claims that he advanced in his motion. Revel also argues that the Superior Court erred when it treated his motion as a motion for modification pursuant to Superior Court Criminal Rule 35(b).

(7) It is clear that the Superior Court did not err when it treated Revel's motion as a motion for modification. Revel's motion included a request that the Superior Court discharge the balance of the DUI/burglary VOP

sentence due to his physical limitations.⁷ Moreover, because Revel did not argue in his opening brief that the Superior Court abused its discretion when denying his request for a sentence modification, he has waived this Court's consideration of that claim on appeal.⁸

(8) Revel's motion also sought to "correct" the Superior Court's alleged failure to discharge the DUI/burglary VOP sentence when adjudicating Revel guilty of VOP in the DUI/escape case. Revel's claim of error is without merit. "The Superior Court has broad authority to terminate probationary sentences 'at any time.'"⁹ The Superior Court was not required to exercise its authority to discharge Revel as unimproved from the unexpired DUI/burglary VOP sentence. Rather, upon completion of the Level V incarceration imposed in January 2002 in the DUI/escape case, Revel was released to the next highest

⁷See, e.g., *Hassett v. State*, 2004 WL 2743423 (Del. Supr.) (affirming denial of Rule 35(b) motion to reduce or modify sentence filed on the basis of medical infirmity); *Vander Hoeven v. State*, 2002 WL 972235 (Del. Supr.) (affirming denial of Rule 35(b) motion for modification of sentence filed on the basis of personal hardship).

⁸*Somerville v. State*, 703 A.2d 629, 631 (Del. 1997) (citing *Murphy v. State*, 632 A.2d 1150, 1152-53 (Del. 1993)).

⁹*Perry v. State*, 741 A.2d 359, 362 (Del. 1999) (quoting Del. Code Ann. tit. 11, § 4333).

level, *i.e.*, Level IV work release, to begin serving the balance of the unserved DUI/burglary VOP sentence.¹⁰

(9) It is manifest on the face of Revel’s opening brief that this appeal is without merit. The issues presented are clearly controlled by settled Delaware law. To the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State’s motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

¹⁰See SENTAC Benchbook, Statement of Policy, No. 19 at 68 (2005) (providing that when an offender is released from incarceration “the release will be to the next highest level specified by the court, or by statute, for any unserved sentence, or portion thereof”).