IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEREMIAH L. SEWELL,	§	
	§	No. 635, 2001
Defendant Below,	§	
Appellant,	§	Court Below--Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County in
	§	VS98-02-0509-05 & VS98-09-
STATE OF DELAWARE,	§	0166-03.
	§	
Plaintiff Below,	§	Def. ID No. 9801013800
Appellee.	§	9808007468

Submitted: March 13, 2002
Decided: April 17, 2002

Before **VEASEY,** Chief Justice, **WALSH** and **HOLLAND,** Justices.

O R D E R

This 17th day of April 2002, 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) In May 1998, the appellant, Jeremiah L. Sewell, pled guilty to a charge of Riot and was sentenced to three years at Level V imprisonment, suspended for one year at Level III probation, followed by one year at Level

II probation. In February 1999, Sewell pled guilty to a charge of Burglary in the Second Degree and was sentenced to three years at Level V imprisonment, suspended upon successful completion of Boot Camp for probation. Sewell was found to have violated his Riot probation on four occasions: March 25, 1999, June 25, 1999, May 2, 2001, and November 2, 2001. Sewell was found to have violated his Burglary in the Second Degree probation on two occasions: May 2, 2001, and November 2, 2001.

(2) By letter dated November 27, 2001, Sewell was advised by the Superior Court that another violation of probation (VOP) hearing, Sewell's fifth, was scheduled for December 7, 2001. The VOP report alleged that Sewell had violated three conditions of his two probations.[1]

[1]Specifically, Sewell was alleged to have violated his probations when he (i) was charged with a new criminal offense during the supervision period; (ii) failed to report his arrest on the new criminal charges; and (iii) failed to abide by an established curfew.

(3) At the December 7 VOP hearing, Sewell admitted that he violated a condition of his probations when he did not report to his probation officer his arrest on new criminal charges. As a consequence, the Superior Court found that Sewell was guilty of VOP and resentenced him to three years at Level V imprisonment for the Riot conviction, followed by two years and six months at Level V imprisonment for the Burglary in the Second Degree conviction.

(4) In his opening brief on appeal, Sewell argues that, at the December 7 VOP hearing, the probation officer misrepresented Sewell's prior criminal record, which caused the Superior Court to reimpose a sentence of Level V incarceration. Moreover, Sewell argues that the Superior Court improperly admitted his probation officer's testimony regarding his prior

criminal record, thereby violating Rule 404(b) of the Delaware Uniform Rules of Evidence (D.R.E.).[2] Sewell's claims are without merit.

(5) Sewell does not support his conclusory claim that his prior criminal record is not as substantial as was portrayed by the probation officer at the VOP hearing, and his claim is otherwise unavailing. Regardless of Sewell's prior criminal record, it is clear nonetheless in the cases *sub judice* that Sewell has repeatedly violated probation. The Superior Court thus acted well within its discretion when it reimposed the suspended prison sentences after finding, based upon Sewell's admission, that Sewell had, once again, violated probation.

[2]D.R.E. 404(b) states in pertinent part: "Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith."

(6) Sewell alleges that the Superior Court violated D.R.E. 404(b) when it improperly considered his probation officer's testimony as to prior crimes. The Delaware Uniform Rules of Evidence, however, do not apply in a VOP hearing.[3] The evidence in a VOP hearing need only be "such as to reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the terms and conditions of probation."[4] In view of Sewell's admission that he violated his probations, it is clear that there was sufficient evidence to support the Superior Court's decision to revoke Sewell's probations.

(7) It is manifest on the face of Sewell's opening brief that this appeal is without merit. The issues raised are clearly controlled by settled

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[3]D.R.E. 1101(b)(3).

[4]*Brown v. State*, 249 A.2d 269, 272 (Del. 1968) (quoting *Manning v. United States*, 161 F.2d 827, 829 (5th Cir. 1947).

Delaware law, and to the extent the issues on appeal implicate the exercise of judicial discretion, 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/Joseph T. Walsh
Justice