

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MALIK X. MILLER,	§
	§
Defendant Below,	§ No. 69, 2013
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0810020682
Plaintiff Below,	§
Appellee.	§

Submitted: June 17, 2013

Decided: July 8, 2013

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

**ORDER**

This 8<sup>th</sup> day of July 2013, upon consideration of the appellant’s opening brief and the State’s motion to affirm, it appears to the Court that:

(1) Malik Miller, the defendant-below (“Miller”), appeals from the Superior Court’s sentence for his second violation of probation (“VOP”). The State of Delaware moves to affirm the judgment below on the ground that it is manifest on the face of Miller’s opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Miller pled guilty in June 2009 to one count of Assault in the First Degree. The Superior Court immediately sentenced him to a total period of twenty-five years at Level V incarceration to be suspended after

serving three years for twenty-two years at Level IV Work Release, to be suspended after serving eight months at Work Release for twenty-one years and four months at Level IV Home Confinement, to be suspended after serving six months at Home Confinement for eighteen months at Level III probation. Miller did not appeal from that sentence. In November 2011, Miller was charged with violating his probation. The Superior Court sentenced him to six months at Level V incarceration or the VOP Center and, upon completion, to restart the Level IV portion of his original sentence. We affirmed the VOP adjudication and sentence on appeal.<sup>1</sup>

(3) In November 2012, Miller was charged with his second VOP for failing to report to his probation officer and for possessing drugs and a firearm. A contested VOP hearing was held on January 16, 2013. The Superior Court found that Miller had again violated the terms of his probation and immediately sentenced him, effective November 18, 2012, to twenty-two years at Level V incarceration to be suspended after serving eight years in prison for eighteen months at Level II probation. This appeal followed.

(4) On appeal, Miller raises four arguments. First, he claims that the State improperly presented hearsay testimony and denied him the right to confront an adverse witness. Second, Miller asserts that the State's evidence was

---

<sup>1</sup> *Miller v. State*, 2012 WL 2580186 (Del. July 3, 2012).

insufficient to establish a VOP. Third, he argues that the trial judge erred in finding that Miller was in possession of drugs or a firearm. Finally, Miller contends that the Superior Court judge had a closed mind and imposed a cruel and unusual punishment based on false aggravating factors.

(5) After careful consideration, we find no merit to Miller’s appeal. In a VOP hearing, the State is only required to prove by a preponderance of the evidence that the defendant violated the terms of his probation.<sup>2</sup> A preponderance of the evidence means “some competent evidence” to “reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation.”<sup>3</sup> The transcript of the VOP hearing in this case reflects that Miller admitted to the charged violation of failing to report to his probation officer. That admission alone is sufficient evidence to justify the Superior Court’s finding of a violation.<sup>4</sup>

(5) Once the Superior Court found Miller in violation of the terms of his probation, it was authorized to require Miller to serve the entire length of his suspended prison term in jail.<sup>5</sup> Thus, the Superior Court, as a matter of law, could

---

<sup>2</sup> *Kurzmann v. State*, 903 A.2d 702, 716 (Del. 2006).

<sup>3</sup> *Id.* (quoting *Collins v. State*, 897 A.2d 159, 160 (Del. 2006)).

<sup>4</sup> *Jenkins v. State*, 8 A.3d 1147, 1154 (Del. 2010).

<sup>5</sup> *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999).

have sentenced Miller to serve in prison the entire twenty one years and six months remaining on his original sentence.<sup>6</sup> The Superior Court, however, only imposed an eight-year prison term for Miller's second VOP, despite Miller's failure to present any evidence in mitigation.<sup>7</sup> Under these circumstances, we find nothing in the record to support Miller's suggestion that the Superior Court judge sentenced him with a closed mind or that his sentence constitutes cruel and unusual punishment.

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

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

---

<sup>6</sup> The State suggests that the Superior Court's sentence for Miller's second VOP may not have properly credited Miller for the six months he spent incarcerated on his first VOP. Miller did not raise this argument on appeal. Accordingly, we do not address it. To the extent Miller may not have received proper credit for all the time he has spent incarcerated on this charge, he may file a motion seeking that credit time in the Superior Court.

<sup>7</sup> See *Jenkins v. State*, 8 A.3d at 1155.