

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEVEN M. RICHARDSON,	§
	§
Defendant Below-	§ No. 405, 2005
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 9507000865
Plaintiff Below-	§
Appellee.	§

Submitted: October 21, 2005

Decided: December 16, 2005

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

ORDER

This 16th day of December 2005, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The defendant-appellant, Deven Richardson, filed this appeal from the Superior Court's denial of his motion for correction of sentence. The State of Delaware has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of Richardson's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Richardson pled guilty in May 1996 to one count of third degree unlawful sexual intercourse and three counts of

third degree unlawful sexual penetration. The Superior Court sentenced him to nine and a half years at Level V imprisonment, to be suspended after serving five years for decreasing levels of supervision. In May 2004, while still serving the probationary portion of his sentence, Richardson was arrested on new criminal charges. After his arrest but before his trial, Richardson also was charged with a violation of his 1996 probation as a result of the new criminal charges against him. In September 2004, the Superior Court found Richardson in violation of his 1996 probation because of the new charges and sentenced him to four years at Level V imprisonment.¹ In May 2005, Richardson filed a motion for correction of sentence asserting that the Superior Court should not have sentenced him on the VOP charge to more than two years. The Superior Court denied the motion, and this appeal followed.

(3) Richardson's argument is grounded in a 2003 amendment to 11 Del. C. § 4333, known as Senate Bill 50, which limits the period of probation that the trial court may impose for sentences imposed after June 1, 2003. Richardson, however, was originally sentenced to probation in 1996, well before the adoption of the amendment. The amendment does not apply

¹ Richardson subsequently was tried and convicted in January 2005 of three counts of third degree rape, one count of fourth degree rape, and three counts of unlawful sexual contact. The Superior Court sentenced him to twenty years imprisonment followed by probation.

retroactively to Richardson's sentence.² Moreover, to the extent Richardson is claiming that the Superior Court should have credited him with the time he previously had served on probation, we find no merit to this contention. Upon finding Richardson in violation of his probation, the Superior Court was authorized to reimpose the full amount of the suspended portion of his original sentence, giving credit only for time served at Level V incarceration.³ Richardson was not entitled to any credit for time he previously spent on probation.⁴

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

² *Sewell v. State*, 2003 WL 22839962 (Del. Nov. 26, 2003).

³ *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999).

⁴ *Shepherd v. State*, 1996 WL 585904 (Del. Oct. 1, 1996).