

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARLES DEAN JURBALA, SR.,	§
	§
Defendant Below-	§ No. 315, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 0103019845
Plaintiff Below-	§
Appellee.	§

Submitted: December 15, 2006

Decided: March 6, 2007

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

ORDER

This 6th day of March 2007, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Charles Dean Jurbala, filed this appeal from the Superior Court's denial of his first motion for postconviction relief, which challenged his 2004 violation of probation (VOP) adjudication and sentence. We find no merit to Jurbala's appeal. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that Jurbala pled guilty in 2001 to one count each of escape after conviction, receiving stolen property, and second degree conspiracy. He was sentenced to a total period of eight years at Level V

incarceration, to be suspended after serving six months for four years at Level III probation followed by three years at Level II probation. In September 2004, after holding a contested violation of probation hearing, the Superior Court found Jurbala in violation of his probation and sentenced him, subject to the provisions of 11 Del. C. § 4204(k),¹ to four years and six months at Level V incarceration, with credit for 51 days previously served, followed by two years at Level IV Home Confinement or Work Release. Thereafter, Jurbala filed two unsuccessful motions seeking modification of his VOP sentence and another motion seeking correction of an illegal sentence. Jurbala's appeal from the Superior Court's denial of his motion for correction of illegal sentence was dismissed for Jurbala's failure to prosecute.

(3) On May 24, 2006, Jurbala filed a motion for postconviction relief, raising four issues: (i) the Superior Court failed to inform him at his VOP hearing that he had a right to appeal; (ii) the VOP adjudication was based on false testimony from the arresting officer; (iii) his VOP sentence violated double jeopardy; and (iv) he was denied the right to present witnesses on his own behalf at the VOP hearing. The Superior Court denied Jurbala's petition on the ground that it was procedurally barred.

¹ Section 4204(k)(1) provides, among other things, that the Superior Court may direct as a condition of a Level V sentence that "all or a specified portion of said sentence shall be served without benefit of any form of early release, good time, furlough, work release, supervised custody or any other form of reduction or diminution of sentence."

(4) When considering a Rule 61 petition, the Superior Court is required to apply the procedural requirements before considering the merits of the petition.² In this case, Jurbala is challenging his 2004 VOP adjudication and sentence. Jurbala, however, never appealed from the VOP proceedings.³ Accordingly, Rule 61(i)(3) acts as a bar to any of Jurbala's belated claims unless he can establish cause for the procedural default and prejudice.⁴ Jurbala can establish neither.

(5) Jurbala contends that the reason he did not appeal his VOP sentence is because the Superior Court failed to inform him of his right to appeal. Jurbala, however, was represented by counsel at the contested VOP hearing. Thus, it was not the trial judge's duty to inform Jurbala of his right to appeal. Moreover, even assuming Jurbala could establish some error on the part of his counsel, we still find no prejudice to Jurbala because there clearly was competent evidence presented at the contested VOP hearing, including Jurbala's own admissions, to support the Superior Court's finding of a probation violation. Moreover, the sentence imposed was within the authorized range of sentences for Jurbala's violation of probation.⁵ The Superior Court's imposition of the VOP sentence pursuant to the conditions of

² *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

³ Although Jurbala did file a later appeal from the Superior Court's denial of Jurbala's motion to modify his sentence, the Superior Court was incorrect when it found that Jurbala had appealed from the original VOP sentencing.

⁴ Super. Ct. Crim. R. 61(i)(3).

⁵ *See* 11 Del. C. § 4334(c).

11 Del. C. § 4204(k) did not constitute an unfair enhancement of Jurbala's sentence.⁶

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

BY THE COURT:

/s/Henry duPont Ridgely
Justice

⁶ *Ingram v. State*, 567 A.2d 868, 869-70 (Del. 1989).