

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILMER L. MILTON,	§
	§
Defendant Below-	§ No. 46, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID Nos. 9912003413 and
Plaintiff Below-	§ 9912011376
Appellee.	§

Submitted: April 18, 2007

Decided: July 2, 2007

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

ORDER

This 2nd day of June 2007, after careful consideration of appellant's opening brief, the State's motion to affirm, and the record below, the Court finds that:

(1) The appellant, Wilmer Milton, filed this appeal from the Superior Court's sentence following Milton's adjudication of guilt on a charge of violating probation. The State of Delaware has filed a motion to affirm the Superior Court's judgment on the ground that it is manifest on the face of Milton's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that, on April 27, 2000, Milton pled guilty under separate indictments to five charges: first degree robbery, possession of a firearm during the commission of a felony, second degree conspiracy, felony theft, and second degree conspiracy. The Superior Court, pursuant to former Criminal Rule 11(e)(1)C, sentenced Milton immediately to twenty-four years at Level V suspended after six years for one year of Level IV home confinement, followed by four years at Level III then five years at Level II probation. While serving Level III probation, Milton tested positive for cocaine four times in October and November 2006 and was arrested as a result. Following a VOP hearing in January 2007, the Superior Court found Milton in violation of his probation and sentenced him to five years at Level V imprisonment, to be suspended after successful completion of the Key Program for eighteen months at Level III Aftercare. This appeal followed.

(3) Milton raises two issues in his opening brief. First, he contends that he is too mentally unstable to participate in the Key Program. Second, Milton appears to contend that the eighteen-month period of Aftercare imposed in the Superior Court's VOP sentencing order exceeds the one-year

period of probation authorized by 11 Del. C. § 4333(f).¹ Neither contention has any merit.

(4) Milton has offered no evidence in support of his mental competency claim, nor has he provided any evidence that he raised this claim to the Superior Court in the first instance at the VOP hearing. As the appealing party, the burden is on Milton to provide the Court with a transcript of all relevant evidence concerning the ruling that is being challenged on appeal.² In the absence of any evidence that this claim was raised to the Superior Court below, this Court will not consider it for the first time on appeal.³

(5) Moreover, Milton was convicted and sentenced in April 2000 for first degree robbery, among other offenses. Once a VOP was established, the Superior Court was authorized to impose the suspended sentence or any lesser sentence.⁴ Accordingly, we find this second claim without merit.

¹ 11 Del. C. § 4333(f) provides that “Except as provided by subsection (g) of this section, in no event shall the total period of probation or suspension of sentence exceed the maximum term of commitment provided by law for the offense or 1 year, whichever is greater; provided, that in all cases where no commitment is provided by law the period of probation or suspension of sentence shall not be more than 1 year.”

² *See Slater v. State*, 606 A.2d 1334, 1336 (Del. 1992).

³ Del. Supr. Ct. R. 8.

⁴ 11 Del. C. § 4334(c).

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice