

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROMAYNE O. JACKSON,	§	
	§	
Defendant Below-	§	No. 31, 2002
Appellant,	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware,
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr.A. No. VN96-09-0413-01
Plaintiff Below-	§	VN97-09-0532-01
Appellee.	§	VN97-09-0533-01
	§	VN97-09-0536-01
	§	VN97-09-0537-01
	§	VN97-09-0539-01

Submitted: August 26, 2002

Decided: September 16, 2002

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

**ORDER**

This 16<sup>th</sup> day of September 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) The defendant-appellant, Romaine O. Jackson, claims error in the Superior Court’s January 10, 2002 finding of several violations of probation (“VOP’s”). The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of

Jackson's opening brief that the appeal is without merit.<sup>1</sup> We agree and AFFIRM.

(2) In May 1998, a Superior Court jury convicted Jackson of Assault in the Second Degree, Robbery in the Second Degree, two counts of Conspiracy in the Second Degree, Felony Receipt of Stolen Property and Resisting Arrest. He was sentenced to a period of Level V incarceration, with probation. This Court affirmed Jackson's convictions and sentences on direct appeal.<sup>2</sup>

(3) In January 2002, a VOP hearing was held in the Superior Court. Jackson's probation officer testified that, while on probation, Jackson was convicted of a traffic offense, pleaded guilty to possession of marijuana, failed to report his arrests and convictions to his probation officer, failed to report for meetings with his probation officer, tested positive for marijuana use on three separate occasions, was found in possession of 1.3 grams of marijuana by his probation officer and failed to make regular payments on a debt owed to the Superior Court. Jackson, who was represented by counsel, testified at the

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<sup>1</sup>SUPR. CT. R. 25(a).

<sup>2</sup>*Jackson v. State*, Del. Supr., No. 385, 1998, Berger, J. (May 26, 1999).

hearing. He admitted the allegations made by the probation officer. Based on the testimony presented, the Superior Court found that Jackson had violated his probation in connection with his 1998 convictions, revoked his probation, and sentenced him to a total of 7 years incarceration at Level V.

(4) In his appeal, Jackson claims that his due process rights were violated because: another Superior Court judge should have presided over his VOP hearing; the probation officer made an erroneous statement to the judge concerning his participation in a drug treatment program; the judge should have ordered an investigation of his history of drug problems; and the sentence imposed by the judge was excessive.

(5) The transcript of the VOP hearing does not support Jackson's claim of a due process violation.<sup>3</sup> Jackson had no right to a VOP hearing before any particular Superior Court judge and, even if his probation officer made an erroneous statement about his participation in a drug program, there is no evidence that the error changed the outcome of the hearing. Jackson, who was represented by counsel, admitted that he had violated his probation and there is, therefore, no basis upon which to challenge that finding by the Superior Court.

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<sup>3</sup>SUPER. CT. CRIM. R. 32.1.

Furthermore, there is no evidence that the sentence of the Superior Court was excessive.<sup>4</sup>

(6) It is manifest on the face of Jackson's opening brief that the appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

s/ Joseph T. Walsh  
Justice

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<sup>4</sup>At the VOP hearing, the probation officer recommended that Jackson receive a sentence of 10 years incarceration at Level V.