

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SCOTT O. JOHNSON,	§
	§ No. 99, 2013
Defendant Below,	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0606001895
	§
Plaintiff Below,	§
Appellee.	§

Submitted: July 19, 2013

Decided: August 29, 2013

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

ORDER

This 29th day of August 2013, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Scott O. Johnson, filed an appeal from the Superior Court’s March 1, 2013 violation of probation (“VOP”) sentencing order. We find no merit to the appeal. Accordingly, we affirm.

(2) The record before us reflects that, in July 2006, a grand jury indicted Johnson on charges of Trafficking in Cocaine, Possession With Intent to Deliver Cocaine, Maintaining a Vehicle for Keeping Controlled Substances, Conspiracy in the Second Degree, and Possession of Drug Paraphernalia. On December 20, 2006, Johnson pleaded guilty to

Trafficking in Cocaine and Maintaining a Vehicle. The remainder of the charges were dismissed. Johnson was sentenced on the trafficking conviction to 6 years of Level V incarceration. On the conviction of maintaining a vehicle, Johnson was sentenced to 3 years at Level V, to be suspended for 3 years of Level IV Crest Program, to be suspended upon successful completion of the program for 18 months of Level III probation.¹ Johnson's convictions were affirmed by this Court on direct appeal.² Johnson's subsequent motions for postconviction relief and for sentence modification were unsuccessful.

(3) On July 30, 2012, upon the recommendation of the Department of Correction, the Superior Court issued an order modifying Johnson's probationary sentence to permit him to participate in an alternative outpatient drug treatment program and to have his probation supervised in New Jersey. On March 1, 2013, the Superior Court found that Johnson had committed a VOP. He was sentenced to 20 months at Level V, with credit for 152 days previously served, to be suspended after 14 months for 6 months at Level IV, with no probation to follow.

¹ A corrected sentencing order was issued on March 8, 2007, providing that the trafficking sentence was pursuant to habitual offender status under Del. Code Ann. tit. 11, § 4214(a).

² *Johnson v. State*, 2008 WL 4717161 (Del. Oct. 28, 2008).

(4) In his appeal from the Superior Court's VOP sentencing order, Johnson claims that: a) the probationary portion of his original sentence for Maintaining a Vehicle is illegal, thus rendering his VOP sentence illegal; b) he was denied his due process rights before the Board of Parole; and c) the Superior Court failed to credit him all the Level V time to which he is entitled.

(5) Johnson's first claim is that the probationary portion of his sentence for Maintaining a Vehicle is illegal. Johnson supports his claim by referring to Del. Code Ann. tit. 11, § 4333(b)(2), which provides that any period of probation on a conviction of maintaining a vehicle is limited to 18 months. However, § 4333(g)(2) provides that a period of probation shall not include any time to be served at Level IV. Because it appears that Johnson has improperly included his Level IV time in his calculation of his original probationary sentence, we conclude that that sentence falls within the statutory requirement and that, therefore, his VOP sentence is also proper. As such, Johnson's first claim is without merit.

(6) Johnson's second claim is that, because he was on conditional release at the time of his VOP, he was entitled to notice and a hearing before the Board of Parole. Johnson is incorrect. While an offender on conditional release remains under the authority of the Board of Parole on a charge of

violating the terms of his release,³ the Superior Court has jurisdiction over a VOP committed by the offender.⁴ Moreover, there is no evidence that Johnson received inadequate due process at his VOP hearing in the Superior Court. A VOP hearing is governed by Superior Court Criminal Rule 32.1 and does not require the full panoply of constitutional protections afforded a defendant at a criminal trial.⁵ Therefore, Johnson's second claim, too, is without merit.

(7) Johnson's third claim is that the Superior Court failed to give him the proper credit for all Level V time served at the time his VOP sentence was imposed. When the Superior Court imposed its VOP sentence on March 1, 2013, it made the effective date of its order December 5, 2012 and also gave Johnson credit for 152 days of Level V time previously served. Johnson does not provide adequate factual support for his claim of improper Level V credit. In the absence of such support, we have no choice but to conclude that Johnson's third claim also is without merit.

³ DEL. CODE ANN. tit. 11, § 4348.

⁴ *Cannon v. State*, 2012 WL 1970102 (Del. June 1, 2012) (citing DEL. CODE ANN. tit. 11, § 4333(a)).

⁵ *Jones v. State*, 560 A.2d 1056, 1058 (Del. 1989) (citing *Black v. Romano*, 471 U.S. 606, 610 (1985)).

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice