

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALLEN P. LUCKETT,	§
	§
Defendant Below-	§ No. 300, 2003
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr.A. No. VK99-08-0262-04
Plaintiff Below-	§
Appellee.	§

Submitted: August 7, 2003  
Decided: September 25, 2003

Before **BERGER, STEELE** and **JACOBS**, Justices

**ORDER**

This 25<sup>th</sup> day of September 2003, 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, Allen Lockett, filed an appeal from the Superior Court's May 30, 2003 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. 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 Lockett's opening brief that the appeal is without merit. We agree and AFFIRM.

(2) On December 30, 1999, Lockett entered a Robinson plea<sup>1</sup> to a charge of Rape in the Fourth Degree and was sentenced immediately to 5 years incarceration at Level V, to be suspended after 1 year for decreasing levels of probation. Lockett later was found to have violated his probation in connection with his rape sentence on three separate occasions.

(3) On November 27, 2002, while serving the Level IV portion of his third violation of probation (“VOP”) sentence, Lockett left the Sussex Work Release Center on a pass, but failed to return. He was apprehended on December 3, 2002. At a hearing on December 13, 2002, the Superior Court found that Lockett had committed a fourth VOP and reimposed a sentence of 3 years incarceration at Level V, to be suspended after 6 months for Level III probation. Lockett did not file a direct appeal from the finding of a VOP.

(3) In this appeal from the Superior Court’s denial of his postconviction motion, Lockett’s sole claim is that his public defender did not fulfill her promise to obtain a sentence of 60-90 days for him if he entered a plea of guilty to the VOP.

(4) Lockett’s claim is without merit. To the extent he argues that his counsel provided ineffective assistance, he has provided no evidence of error

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<sup>1</sup>*Robinson v. State*, 291 A.2d 279 (Del. 1972) (permitting the acceptance of a guilty plea in the absence of an admission of guilt).

resulting in prejudice to him.<sup>2</sup> To the extent he argues that his VOP sentence was improper, he has provided no evidence that his sentence exceeded the allowable limit.<sup>3</sup>

(5) It is manifest on the face of Lockett's opening brief that this 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/ Myron T. Steele  
Justice

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<sup>2</sup>*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984) (the defendant must show that his counsel's representation fell below an objective standard of reasonableness and that, but for counsel's professional errors, there is a reasonable probability that the outcome of the proceedings would have been different).

<sup>3</sup>DEL. CODE ANN. tit. 11, § 4334(c); *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999) (upon a finding of a VOP, the Superior Court is authorized to reimpose any previously suspended Level V term).