

SUPREME COURT OF THE STATE OF DELAWARE

Zera v. State

Zera v. State · No. No. 293, 2018 · Decided September 25, 2018

SUMMARY

The Delaware Supreme Court affirmed the Superior Court’s sentence imposed after Kenneth Zera violated probation conditions concerning internet access, possession of an internet-enabled cell phone, and related conduct. The Court held that the sentence did not exceed the previously suspended Level V incarceration and was within statutory limits.

OPINION

Zera v. State

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNETH ZERA, §

§ Defendant Below, § No. 293, 2018 Appellant, § § Court Below—Superior Court v. § of the State of Delaware §

STATE OF DELAWARE, § Cr. ID No. 1106028037 (K)

§ Plaintiff Below, § Appellee. § Submitted: August 22, 2018 Decided: September 25, 2018 Before STRINE, Chief Justice; VALIHURA and SEITZ, Justices.

ORDER

After consideration of the appellant’s opening brief, the appellee’s motion to affirm, and the record below, the Court concludes that:

(1) The appellant, Kenneth Zera, filed this appeal from the Superior Court’s May 11, 2018 order sentencing him for a violation of probation (“VOP”). The State of Delaware has moved to affirm the Superior Court’s judgment on the ground that it is manifest on the face of Zera’s opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that, on August 23, 2011, Zera pled guilty to Sexual Exploitation of a Child in exchange for the State dismissing multiple counts of Dealing in Child Pornography. The Superior Court sentenced Zera, effective June 30, 2011, to fifteen years of Level V incarceration suspended after two years for decreasing levels of supervision. The sentencing order required Zera to engage in sexual offender treatment and prohibited him from accessing the internet or possessing a computer with internet service.

(3) On May 23, 2014, an administrative warrant was filed for Zera’s VOP. After a VOP hearing on June 13, 2014, the Superior Court found that Zera had violated his probation and sentenced him, effective June 2, 2014, to thirteen years of Level V incarceration,

suspended after successful completion of the Level V Transitions Sex Offender Program for decreasing levels of supervision. On February 28, 2017, another administrative warrant was filed for Zera's VOP. After a VOP hearing on March 13, 2017, the Superior Court found that Zera had violated his probation and sentenced him, effective February 23, 2017, to ten years and seven months of Level V incarceration suspended for six months of Level IV work release, followed by one year of Level III probation.

(4) On April 23, 2018, another administrative warrant was filed for Zera's VOP. The VOP report alleged that Zera had failed a polygraph examination regarding his internet use and sexual contact with a minor, possessed a cell phone with internet access, continued to possess a cell phone with internet access even after his probation officer directed him to get a new cell phone without internet access, and admitted to online gaming at least once a month. After a VOP hearing on May 21, 2018, the Superior Court found that Zera had violated his probation. The Superior Court sentenced Zera, effective April 19, 2018, to ten years and six months of Level V incarceration, suspended after successful completion of the Life Skills Program for two years of Level III probation and participation in the Level III Transitions Sex Offender Program. This appeal followed.

(5) In his opening brief, Zera does not dispute that he violated his probation, but argues that his sentence is excessive because he will not be able to start the Life Skills Program until June 2019. Once Zera committed a VOP, the Superior Court could impose any period of incarceration up to and including the balance of the Level V time remaining on his sentence.¹ The Level V sentence imposed by the Superior Court after Zera's VOP did not exceed the Level V time previously suspended and was within statutory limits. NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED and the judgment of the Superior Court is AFFIRMED. BY THE COURT: /s/ Karen L. Valihura Justice 1 11 Del. C. § 4334(c); Pavulak v. State, 880 A.2d 1044, 1046 (Del. 2005). 3