

SUPREME COURT OF THE STATE OF DELAWARE

Comeger v. State

Comeger v. State · No. No. 344, 2019 · Decided November 22, 2019

SUMMARY

The Delaware Supreme Court affirmed the Superior Court’s sentence imposed after Ricardo Comeger’s fourth violation of probation. The Court held that the sentence was within statutory limits and declined to review Comeger’s claim regarding credit for time served because he did not provide the necessary sentencing-hearing transcript.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Gary F. Traynor; Seitz, Chief Justice; Valihura, Justice; Traynor, Justice
JURISDICTION	Delaware
DECIDED	November 22, 2019
DOCKET	No. 344, 2019
DISPOSITION	affirmed
PROCEDURAL POSTURE	Ricardo Comeger appealed the Superior Court's July 9, 2019 sentencing order following his fourth violation of probation. He sought modification of the sentence to remove the work-release condition, and also raised an unreviewable claim concerning credit for time served in an unrelated dismissed case.
STANDARD OF REVIEW	A sentence within statutory limits will not be disturbed on appeal unless the probationer establishes that the sentencing judge relied on impermissible factors or exhibited a closed mind. Claims of error requiring a transcript cannot be reviewed when the appellant fails to provide the necessary transcript.
PRECEDENTIAL VALUE	Published Delaware Supreme Court order; precedential status is not otherwise specified in the opinion text.
PARTIES	Ricardo Comeger v. State of Delaware

TOPICS

probation

sentencing

appellate procedure

standard of review

preservation of error

PRACTICE AREAS

criminal procedure

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QUESTIONS PRESENTED

1. Whether the Superior Court abused its sentencing discretion by imposing a work-release condition after Comeger's fourth violation of probation.
2. Whether the Supreme Court could review Comeger's claim that he was entitled to credit for time served in an unrelated case when he failed to provide the transcript of the violation-of-probation and sentencing hearing.

HOLDINGS

1. Once the State proves a violation of probation by a preponderance of the evidence, the Superior Court may require the probationer to serve the original sentence or any lesser sentence it deems appropriate. A sentence within statutory limits will not be disturbed absent reliance on impermissible factors or a closed mind.
2. An appellant bears the burden of requesting and providing the transcript necessary to permit appellate review; without the relevant transcript, the court cannot review a claim dependent on what occurred at the violation-of-probation and sentencing hearing.

KEY QUOTATIONS

“Once the State has proven by a preponderance of the evidence that a VOP has occurred, the Superior Court has the discretion to require the probationer to serve the original sentence or any lesser sentence that it deems appropriate.” (¶ 5)

“If the sentence imposed falls within statutory limits, we will not disturb the sentence on appeal unless the probationer can establish that the sentencing judge relied on impermissible factors or exhibited a closed mind when sentencing him.” (¶ 5)

FACTUAL BACKGROUND

Comeger pleaded guilty to aggravated menacing in July 2017 and received a sentence of five years of Level V incarceration suspended for one year of Level III probation. The Superior Court found him in violation of probation three times between 2017 and 2019. After a fourth violation on July 9, 2019, the court imposed four years and nine months of Level V incarceration, suspended after three months for three months of Level IV work release and one year of Level III probation. Comeger admitted the violation and challenged only the work-release condition, while also asserting that he should receive credit for time served in an unrelated case.

PROCEDURAL HISTORY

Comeger pleaded guilty in July 2017 to aggravated menacing and received five years of Level V incarceration suspended for one year of Level III probation. After three prior probation violations, the Superior Court found a fourth violation on July 9, 2019, and imposed four years and nine months of Level V incarceration, suspended after three months for three months of Level IV work release followed by one year of Level III probation. The Delaware Supreme Court granted the State's motion to affirm and affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- State v. Sloman, 886 A.2d 1257, 1260 (Del. 2005)
- Weston v. State, 832 A.2d 742, 746 (Del. 2003)
- Mart. v. State, 2016 WL 552686, at *2 (Del. Feb. 10, 2016)
- Tricoche v. State, 525 A.2d 151, 154 (Del. 1987)

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