

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

sentencing

probation

appellate procedure

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)

OPINION

Comeger v. State

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICARDO COMEGER, §

§ Defendant Below, § No. 344, 2019 Appellant, § § v. § Court Below–Superior Court § of the State of Delaware

STATE OF DELAWARE, §

§ Cr. ID 1612009800 (N) Plaintiff Below, § Appellee. § § Submitted: September 17, 2019
Decided: November 22, 2019 Before SEITZ, Chief Justice; VALIHURA and TRAYNOR, Justices.

ORDER

Upon consideration of the appellant’s opening brief, the State’s motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Ricardo Comeger, appeals from the Superior Court’s July 9, 2019 order sentencing him for his fourth violation of probation (“VOP”). The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Comeger’s opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that, in July 2017, Comeger pleaded guilty to one count of aggravated menacing in Case Number 1612009800.1 The Superior Court sentenced Comeger to five years of Level V incarceration, suspended for one year of Level III probation. Between 2017 and 2019, the Superior Court found Comeger in violation of the terms of his probation on three occasions.

(3) On July 9, 2019, the Superior Court found Comeger in violation

of the terms of his probation for a fourth time. The Superior Court sentenced Comeger to 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. This appeal followed.

(4) Comeger does not dispute that he violated the terms of his probation. To the contrary, Comeger admits his guilt. However, he asks this Court to modify his sentence to remove the Work Release condition.

(5) We affirm the Superior Court's judgment. 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. 2 If the 1 At the same time, the Superior Court also sentenced Comeger on one count of breach of conditions of release in a different case. 2 *State v. Sloman*, 886 A.2d 1257, 1260 (Del. 2005). 2 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.3

(6) In this case, the Superior Court's July 9, 2019 sentence fell within the statutory limits prescribed by the legislature, and Comeger does not contend that the judge relied on impermissible factors or sentenced him with a closed mind. To the extent Comeger alleges he is entitled to credit for time he served in an unspecified case that was ultimately dismissed, the Court is unable to review it. As the appealing party, Comeger had the burden to request and provide the Court with the transcript necessary to give the Court a means to review the claim of error.4 Without the transcript of the July 9, 2019 VOP and sentencing hearing, we are unable to review any claim that Comeger was denied credit for time previously served in an unrelated case.5 NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED. BY THE COURT: /s/ Gary F. Traynor Justice 3 *Weston v. State*, 832 A.2d 742, 746 (Del. 2003). 4 *Mart. v. State*, 2016 WL 552686, at *2 (Del. Feb. 10, 2016). 5 *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987). 3