

SUPREME COURT OF THE STATE OF DELAWARE

Horsey v. State

Horsey · No. No. 345, 2021 · Decided May 4, 2022

SUMMARY

The Delaware Supreme Court affirmed the Superior Court’s violation-of-probation sentence imposed on Rayquian Horsey. The Court held that the sentence was within statutory limits and that Horsey identified no impermissible factual basis, judicial vindictiveness or bias, or closed-mindedness warranting appellate relief.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Seitz, Chief Justice; Traynor, Justice; Montgomery-Reeves, Justice
JURISDICTION	Delaware
DECIDED	May 4, 2022
DOCKET	No. 345, 2021
DISPOSITION	affirmed
PROCEDURAL POSTURE	Horsey appealed the Superior Court's judgment revoking his probation and imposing a violation-of-probation sentence. The Supreme Court considered the State's motion to affirm under the record and Horsey's opening brief.
STANDARD OF REVIEW	Appellate review of a sentence is extremely limited and generally ends when the sentence is within statutory limits. Review is limited to whether the sentence rests on false, impermissible, or minimally reliable factual predicates, or reflects judicial vindictiveness, bias, or a closed mind.
PRECEDENTIAL VALUE	published Delaware Supreme Court opinion
PARTIES	Rayquian Horsey v. State of Delaware

TOPICS

- sentencing
- probation
- standard of review
- appellate procedure
- criminal procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Superior Court's violation-of-probation sentence was impermissibly extreme or otherwise subject to appellate correction.
2. Whether Horsey's violation-of-probation counsel failed to satisfy the obligation to advise him regarding his right to appeal and the deadline for filing a notice of appeal.

HOLDINGS

1. The VOP sentence was affirmed because it was within the statutory limits and Horsey identified no false, impermissible, or unreliable factual predicate, judicial vindictiveness, bias, or closed judicial mind.
2. Horsey's ineffective-assistance argument lacked merit because Supreme Court Rule 26(l) requires counsel to advise the defendant in writing about the right to appeal, whether counsel will continue representation, and the requirement to file a notice of appeal within thirty days, and the record showed that counsel satisfied those obligations.

KEY QUOTATIONS

"This Court's appellate review of a sentence is extremely limited and generally ends upon a determination that the sentence is within statutory limits." (at 2)

"If the sentence falls within the statutory limits, 'we consider only whether it is based on factual predicates which are false, impermissible, or lack minimal reliability, judicial vindictiveness or bias, or a closed mind.'" (at 2)

FACTUAL BACKGROUND

Horsey pleaded guilty to possession of a firearm by a person prohibited in exchange for dismissal of other drug and weapon charges. The Superior Court sentenced him to eight years of Level V incarceration, suspended for one year of Level III probation, with substance-abuse evaluation and treatment conditions. The Department of Correction later reported that Horsey had been charged with new crimes, failed to report to his probation officer, and failed to complete a substance-abuse evaluation. Following a violation hearing, the Superior Court found a probation violation and imposed seven years and six months of Level V incarceration, suspended after one year for decreasing levels of supervision.

PROCEDURAL HISTORY

Horsey pleaded guilty in the Superior Court to possession of a firearm by a person prohibited and received a Level V sentence suspended for probation. After the Department of Correction filed a violation-of-probation report, the Superior Court found a violation and imposed seven years and six months of Level V incarceration, suspended after one year for decreasing levels of supervision. Horsey appealed, challenging the severity of the VOP sentence and asserting ineffective assistance concerning notice of appeal obligations. The Delaware Supreme Court granted the State's motion to affirm and affirmed.

DISPOSITION

affirmed

CASES CITED

- Kurzmann v. State, 903 A.2d 702, 714 (Del. 2006)
- Pavulak v. State, 880 A.2d 1044, 1046 (Del. 2005)

OPINION

PER CURIAM.

EFiled: May 04 2022 08:26AM EDT Filing ID 67582707 Case Number 345,2021 IN THE SUPREME COURT OF THE STATE OF DELAWARE RAYQUIAN HORSEY, § § No. 345, 2021 Defendant Below, § Appellant, § Court Below—Superior Court § of the State of Delaware v. § § Cr. ID No. 1910015287 (K) STATE OF DELAWARE, § § Appellee. § Submitted: March 7, 20221 Decided: May 4, 2022 Before SEITZ, Chief Justice; TRAYNOR and MONTGOMERY-REEVES, Justices.

ORDER Upon consideration of the opening brief, motion to affirm, and record on appeal, it appears to the Court that: (1) On March 31, 2020, Rayquian Horsey pled guilty to possession of a firearm by a person prohibited (“PFBPP”) in exchange for the dismissal of other drug and weapon charges.

On May 24, 2021, the Superior Court sentenced Horsey to eight years of Level V incarceration, suspended for one year of Level III probation. As part of his sentence, Horsey was to be evaluated for substance abuse and to follow all recommended treatment. 1 The motion to affirm was refiled on April 19, 2022 to include the exhibits referenced in the original motion.

(2) On August 27, 2021, the Department of Correction filed a VOP report. The VOP report alleged, among other things, that Horsey had been charged with new crimes, failed to report to his probation officer since May, and failed to complete a substance abuse evaluation.

After a hearing on October 22, 2021, the Superior Court found that Horsey had violated his probation. The Superior Court sentenced Horsey, effective October 1, 2021, to seven years and six months of Level V incarceration, suspended after one year for decreasing levels of supervision. This appeal followed.

(3) In his opening brief, Horsey does not dispute that he violated his probation, but instead contends that the VOP sentence was “extreme” for a first, technical VOP.² This Court’s appellate review of a sentence is extremely limited and generally ends upon a determination that the sentence is within statutory limits.³ If the sentence falls within the statutory limits, “we consider

only whether it is based on factual predicates which are false, impermissible, or lack minimal reliability, judicial vindictiveness or bias, or a closed mind.”⁴ 2 Opening Br.

1. In the combined notice of appeal and opening brief he filed on October 28, 2021, Horsey also argued that his VOP counsel was ineffective for advising Horsey that he needed to file his own notice of appeal if he wished to appeal the VOP sentence. He is mistaken. Supreme Court Rule 26(l) provides that defense counsel satisfies his continuing obligation in VOP proceedings if he advises his client, in writing, of any right to appeal, whether defense counsel will continue representation on appeal, and that if the client wishes to appeal, he must file a notice of appeal within thirty days.

The record reflects Horsey’s VOP counsel satisfied Rule 26(l). ³ Kurzmann v. State, 903 A.2d 702, 714 (Del. 2006). ⁴ Id. 2 (4) Once Horsey 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 Horsey’s sentence.⁵ Horsey does not argue that the VOP sentence exceeded statutory limits or the Level V time previously suspended.

Nor has Horsey identified any basis to suggest that the VOP sentence was based on factual predicates that are false, impermissible, or lack minimal reliability, judicial vindictiveness or bias, or a closed mind. It is manifest on the face of Horsey’s opening brief that his appeal is without merit. NOW, THEREFORE, IT IS ORDERED that the State’s motion to affirm is GRANTED and the judgment of the Superior Court is AFFIRMED.

BY THE COURT: /s/ Tamika R. Montgomery-Reeves Justice 5 11 Del. C. § 4334(c); Pavulak v. State, 880 A.2d 1044, 1046 (Del. 2005). 3