

SUPREME COURT OF THE STATE OF DELAWARE

Carney v. State

Carney · No. No. 581, 2014 · Decided December 15, 2014

SUMMARY

The Delaware Supreme Court affirmed the Superior Court’s sentence imposed after Sebastian Carney violated probation by failing to report and failing to comply with special probation conditions. The Court held that the sentence was within statutory limits and was not excessive or otherwise an abuse of discretion. The Court declined to review Carney’s challenge to a TASC counselor’s testimony because he failed to provide the transcript of the violation-of-probation hearing and sentencing.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Leo E. Strine, Jr., Chief Justice; Holland, Justice; Valihura, Justice
JURISDICTION	Delaware
DECIDED	December 15, 2014
DOCKET	No. 581, 2014
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Superior Court of Delaware's order finding Carney in violation of probation and imposing a Level V sentence.
STANDARD OF REVIEW	A probation-violation sentence is reviewed for abuse of discretion and will be upheld when it is within statutory limits and is not excessive. Claims of error in proceedings below are not reviewable when the appellant fails to provide an adequate transcript required by the court rules.
PRECEDENTIAL VALUE	Published Delaware Supreme Court order; precedential status is not expressly stated in the document text.
PARTIES	Sebastian Carney v. State of Delaware

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Superior Court imposed an excessive sentence for Carney's fourth violation of probation and improperly exceeded the sentencing guidelines.
2. Whether the Superior Court failed to credit Carney with time served.
3. Whether the Supreme Court could review Carney's challenge to the TASC counselor's testimony when Carney failed to provide the transcript of the violation-of-probation hearing and sentencing.

HOLDINGS

1. Upon finding a defendant in violation of probation, the Superior Court may impose incarceration up to and including the balance of Level V time remaining on the original sentence. Carney's sentence was within statutory limits, was not excessive under the circumstances, and did not constitute an abuse of discretion or reflect a closed mind by the sentencing judge.
2. The Supreme Court could not review Carney's challenge to the TASC counselor's testimony because he failed to order and provide the transcript of the violation-of-probation hearing and sentencing.

KEY QUOTATIONS

"Upon finding a defendant in violation of probation, the Superior Court is authorized to impose any period of incarceration up to and including the balance of the Level V time remaining to be served on the original sentence." (3)

"As we have held many times, the failure to include adequate transcripts of the proceedings, as required by the rules of the Court, precludes appellate review of a defendant's claims of error in the proceedings below." (3)

FACTUAL BACKGROUND

Carney pleaded guilty to four criminal charges between March 2011 and September 2012 and received sentences totaling six years at Level V incarceration, most of which was suspended for probation. In July 2014, he was charged with violating probation by failing to report and failing to comply with special conditions. The Superior Court found a violation and sentenced him to four years and one month at Level V, suspended after one year and one month in prison for decreasing levels of supervision. Carney did not challenge the violation finding but argued that the sentence was excessive, that he was not credited with time served, and that a TASC counselor had testified falsely.

PROCEDURAL HISTORY

Carney pleaded guilty to multiple theft, burglary, and heroin-possession charges and received sentences, most of which were suspended for probation. After the Superior Court found him in violation of probation for failing to report and comply with special conditions, it imposed four years and one month at Level V incarceration, suspended after one year and one month for decreasing levels of supervision. Carney appealed, challenging the

excessiveness of the sentence, the failure to credit time served, and testimony by a TASC counselor. The Delaware Supreme Court granted the State's motion to affirm.

DISPOSITION

affirmed

CASES CITED

- Weston v. State, 832 A.2d 742, 746 (Del. 2003)
- Wynn v. State, 23 A.3d 145, 148-49 (Del. 2011)
- Tricoche v. State, 525 A.2d 151, 154 (Del. 1987)