

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SHAWN E. FELICETTY,	§
	§
Defendant Below-	§ No. 130, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr.A. Nos. VS98-06-0185-04
Plaintiff Below-	§ VS98-06-0188-04
Appellee.	§ VS98-06-0191-04
	§ VS98-06-0428-04
	§ VS98-06-0429-04
	§ VS97-12-0650-04

Submitted: November 19, 2001

Decided: February 4, 2002

Before **VEASEY**, Chief Justice, **HOLLAND** and **BERGER**, Justices

**ORDER**

This 4th day of February 2002, upon consideration of the appellant's opening brief and appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Shawn Felicetty, filed an appeal from the February 26, 2001 orders of the Superior Court finding him in violation of probation.<sup>1</sup> The plaintiff-appellee, State of Delaware, has

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<sup>1</sup>By Order dated October 15, 2001, this Court permitted Felicetty to proceed pro se in this appeal.

moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Felicetty's opening brief that the appeal is without merit.<sup>2</sup> We agree and AFFIRM.

(2) In his appeal, Felicetty claims that: a) there was no factual basis presented at the violation of probation ("VOP") hearing for the finding that he "possess[ed] or consum[ed] a controlled substance" and the violation report did not provide him with notice of this charge; b) it was improper for the Superior Court to rely on the sentencing recommendations of TASC<sup>3</sup>; c) two witnesses were coerced into testifying against him and the judge presided over the hearing with a closed mind; d) it was improper for the Superior Court to move him up two supervision levels in the absence of any aggravating circumstances; and e) hearsay evidence was admitted improperly.

(3) In 1998, Felicetty pleaded guilty to Assault in the Second Degree, Assault in the Third Degree, Criminal Trespass in the First Degree, Resisting Arrest, and two counts of Forgery in the Second Degree. On the Assault in the Second Degree conviction, he was

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<sup>2</sup>SUPR. CT. R. 25(a).

<sup>3</sup>Treatment Access Center.

sentenced to five years incarceration at Level V, to be suspended after eighteen months for six months at Level II. On each of his remaining convictions, he was sentenced to one-year incarceration at Level V, to be suspended for one year at Level II probation.

(4) In October 2000, Felicetty was found in violation of probation. On the Assault in the Second Degree conviction, he was sentenced to two years incarceration at Level V, suspended for thirty days at Level IV (VOP Center), followed by eighteen months at Level III.<sup>4</sup> On each of his remaining convictions, Felicetty was sentenced to one-year incarceration at Level V, to be suspended for one year at Level III probation.<sup>5</sup>

(5) In November 2000, Felicetty was released from the VOP Center and returned to his residence in Seaford, Delaware, while still on Level III probation. In December 2000, after executing a search warrant, the Seaford Police Department arrested Felicetty and others at his Seaford residence on various drug-related charges. As a result of this arrest, Felicetty was again charged with violating a condition of his probation.

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<sup>4</sup>The sentencing order reflects that one of the conditions of Felicetty's sentence was zero tolerance for alcohol, drugs and missed appointments.

<sup>5</sup>The record reflects that this was the third time Felicetty was violated on these charges.

(6) A contested VOP hearing was conducted in the Superior Court on February 26, 2001. Felicetty, represented by the Public Defender, was found in violation of his probation. On the Assault in the Second Degree conviction, his two-year sentence at Level V was re-imposed, with credit for time served and the balance of the sentence to be suspended. On the Assault in the Third Degree conviction, he was sentenced to one-year incarceration at Level V, to be suspended for successful completion of the Key Program. On the conviction for resisting arrest, he was sentenced to one-year incarceration at Level V, to be suspended for six months at Level IV Crest upon successful completion of the Key Program. On the criminal trespass conviction and each of the forgery convictions, Felicetty was sentenced to one-year incarceration at Level V, to be suspended for one year at Level III Aftercare upon successful completion of the Key Program.

(7) There is no merit to any of Felicetty's claims. We have reviewed carefully the transcript of the VOP hearing and there was more than adequate support for the Superior Court's finding that Felicetty had committed a VOP.<sup>6</sup> Moreover, given the circumstances of Felicetty's

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<sup>6</sup>Although Felicetty complains that there was insufficient evidence presented at his VOP hearing that he "possess[ed] or consum[ed] a controlled substance", the Violation

arrest, there is no merit to his claim that he had insufficient notice of the nature of the alleged violation. Also, in light of the evidence presented at the hearing, there was no abuse of discretion on the part of the Superior Court in accepting TASC's recommendation that Felicetty participate in the Key/Crest Program. While the Superior Court judge noted that two witnesses against Felicetty were "reluctant," the record reflects no evidence of witness coercion and no evidence that the judge acted with a closed mind. There is no evidence supporting Felicetty's claim that he was sentenced improperly.<sup>7</sup> Finally, to the extent the Superior Court permitted hearsay testimony at the VOP hearing, there is no evidence that it was prejudicial to Felicetty or that the requirements of due process were not met.<sup>8</sup>

(8) It is manifest on the face of Felicetty's opening brief that this appeal is without merit because the issues presented on appeal are

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Report and the hearing transcript reflect that his VOP was based upon the commission of "a new criminal offense." The Superior Court was within its discretion in finding a VOP based upon the testimony of 3 witnesses who stated they had seen Felicetty in possession of illegal drugs at his residence after his release from the VOP Center and the testimony of the investigating officer concerning the extent of the drug paraphernalia found at Felicetty's residence.

<sup>7</sup>Felicetty does not claim that his VOP sentences exceeded either the statutory limits or his original sentences. *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999); *Ingram v. State*, 567 A.2d 868, 869 (Del. 1989).

controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

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<sup>8</sup>SUPER. CT. CRIM. R. 32.1.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice