

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH R. MAINS,	§	
	§	No. 465, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 9808025009
Appellee.	§	

Submitted: November 3, 2010
Decided: February 1, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 1st day of February 2011, upon consideration of the appellant's opening brief and the appellee's motion to affirm, it appears to the Court that:

(1) In November 1998, the appellant, Joseph R. Mains, was charged by information with Unlawful Sexual Intercourse in the First Degree and related offenses. The alleged victim was Mains' former common-law wife with whom he had fathered several children, including three girls.

(2) In February 1999, Mains pled *nolo contendere*, pursuant to Superior Court Criminal Rule 11(e)(1)(c), to Unlawful Sexual Intercourse in the Second Degree. A *nolle prosequi* was entered on the remaining charges.

(3) Pursuant to the plea agreement, Mains was immediately sentenced to twenty years at Level V, suspended after ten years minimum mandatory, for six months at Level IV, one year at Level III and three years at Level II. As part of the sentence, Mains was instructed to have no contact with the victim.

(4) Mains was released in June 2007 after serving the non-suspended portion of his sentence. In October 2007, due to a concern that Mains was “engaging in inappropriate sexual behavior” with one of his biological daughters (who was by then an adult) (hereinafter “his Daughter”), Mains’ probation officer filed a progress report recommending that the Superior Court mandate that Mains have no contact with his three daughters. By order dated October 23, 2007, the Superior Court modified the no contact provision to include Mains’ three daughters.

(5) Since then, Main has been convicted three times for violation of probation (VOP). All of the convictions have been due to Mains having contact with his Daughter. For the first VOP conviction in November 2008, Mains was sentenced to four years at Level III supervision. For the second VOP conviction in December 2009, Mains was sentenced to eight years at Level III supervision.

(6) This appeal arises from Mains’ third VOP conviction on March 25, 2010. Following a presentence investigation, the Superior Court sentenced Mains, on June 24, 2010, to ten years *mandatory* at Level V, pursuant to title 11, section

4204(k) of the Delaware Code,¹ followed by six months at Level III supervision.² When imposing the sentence pursuant to section 4204(k), the Superior Court noted that Mains had contact with his Daughter almost immediately upon his release from custody in June 2007, that his Daughter was pregnant with Mains' child by November 2007, that Mains' prior VOP convictions were due to having contact with his Daughter, and that his Daughter was currently pregnant with a second child by Mains.

(7) In his opening brief on appeal from the June 2010 VOP sentence, Mains seeks a reduction of the sentence, claiming it is too harsh and exceeded what was recommended by his probation officer. Mains' claims are not a basis for appellate relief and are otherwise without merit.

(8) Appellate review of a VOP sentence is limited to whether a sentence has exceeded statutory limits.³ “[O]nce a defendant violates the terms of his probation, the Superior Court has the authority to require a defendant to serve the sentence initially imposed, or any lesser sentence.”⁴

¹ See Del. Code Ann. tit. 11, § 4204(k) (2007) (providing that the court may direct that a sentence of imprisonment at Level V be served without any form of reduction or diminution of sentence).

² See Del. Code Ann. tit. 11, § 4204(l) (2007) (providing that, on a sentence of 1 year or more, the court must include as part of the sentence a period of custodial supervision at either Level IV, III or II for a period of not less than 6 months).

³ *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).

⁴ *State v. Sloman*, 886 A.2d 1257, 1260 (Del. 2005) (citing 11 Del. C. § 4334(c)).

(9) In this case, Mains' June 24, 2010 VOP sentence is within statutory limits⁵ and does not exceed the total period of incarceration imposed in the original sentence in February 1999.⁶ To the extent Mains argues that the 4204(k) condition constituted an illegal enhancement of the original sentence, his claim is without merit.⁷ Under the circumstances of this case, the Superior Court's imposition of the 4204(k) condition was entirely appropriate.

NOW, THEREFORE IT IS HEREBY ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁵ See Del. Code Ann. tit., 11 §§ 774 (1997) (governing unlawful sexual intercourse in the second degree, a class B felony), 4205(b)(2) (1998) (listing sentence for class B felony). Former 11 Del. C. § 774 governing unlawful sexual intercourse in the second degree was repealed and replaced by current 11 Del. C. § 772 (governing rape in the second degree, a class B felony). 71 Del. Laws, c. 285, § 12.

⁶ Del. Code Ann. tit., 11 § 4334(c) (2007); *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999); *Ingram v. State*, 567 A.2d 868, 869 (Del. 1989).

⁷ *Kennard v. State*, 2010 WL 3769174 (Del. Supr.) (citing *Ingram v. State*, 567 A.2d 868, 870 (Del. Supr.); *Jurbala v. State*, 2007 WL 666783 (Del. Supr.)).