

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GREGORY S. PHILLIPS,	§
	§
Defendant Below-	§ No. 132, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. VS96-12-0337-03
Plaintiff Below-	§ VS96-12-0338-03
Appellee.	§ VS96-12-0343-03
	§ VS98-08-0227-01

Submitted: December 21, 2001
Decided: February 11, 2002

Before **HOLLAND, BERGER** and **STEELE**, Justices

ORDER

This 11th day of February 2002, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Gregory S. Phillips, filed an appeal from the March 2, 2001 sentencing order following his violation of probation hearing. We find no merit to the appeal. Accordingly, we **AFFIRM**.

(2) In this appeal,¹ Phillips claims that his violation of probation (“VOP”) hearing was improper because: a) his extradition to Delaware was illegal; b) he never received a copy of the warrant or capias notifying him of the underlying violation; c) his probation officer violated his civil rights; d) his probation officer lied at the VOP hearing and some of her testimony was omitted from the transcript; e) the Superior Court did not give him proper credit for time already served at Level V; f) the Superior Court erroneously sentenced him in excess of the TIS guidelines and adjudicated his case with a closed mind; and g) the Superior Court violated his constitutional rights and abused its discretion by sentencing him to the Key Program in the absence of any evidence of a substance abuse problem.

(3) In June 1997, Phillips pleaded guilty to Reckless Endangerment in the First Degree, Harassment, and Possession of a Deadly Weapon By a Person Prohibited.² He was sentenced to a total of 8 years and 6 months incarceration at Level V, to be suspended after 1 year for 4 years of decreasing levels of probation. In July 1998, Phillips was found to be in

¹On June 13, 2001, following an evidentiary hearing and the filing of findings of fact by the Superior Court, this Court granted Phillips’ motion for leave to pursue his appeal pro se. SUPR. CT. R. 19(c) and 26(d) (iii).

²SUPER. CT. CRIM. R. 11(e) (1) (C).

violation of probation and his 1997 sentences were re-imposed.³ In August 1998, Phillips was arrested on a charge of Escape after Conviction while at Level IV.⁴ In November 1998, he pleaded guilty to that charge and was sentenced to 2 years incarceration at Level V, to be suspended after 6 months for an additional 6 months at Level III followed by 1 year at Level II.

(4) In August 1999, Phillips' probation officer applied for a capias for Phillips' arrest on the ground that he had violated his probation by absconding. In August 2000, Phillips was apprehended in Florida and waived extradition to Delaware. At a February 23, 2001 VOP hearing, Phillips was found to be in violation of his probation.⁵ At a continuation of the VOP hearing on March 2, 2001, he was sentenced to a total of 5 years and 9 months of Level V incarceration, to be suspended after successful completion

³Phillips was sentenced to a total of 7 years and 6 months at Level V incarceration, to be suspended for 6 months at Level IV, followed by 3 years and 6 months at Level III and 2 years at Level II.

⁴Phillips' probation was revoked and his sentences on the 1997 charges were re-imposed. He was sentenced to a total of 7 years and 6 months incarceration at Level V, to be suspended after 90 days for decreasing levels of probation.

⁵This VOP applied to Phillips' convictions for Reckless Endangerment, Harassment, Possession of a Deadly Weapon by a Person Prohibited and Escape after Conviction.

of the Key Program for 1 year of residential substance abuse treatment, followed by 1 year of Aftercare and 18 months of Level III probation.

(5) Phillips did not raise his claims of error at either of the VOP hearings on February 23, 2001 or March 2, 2001. As such, the claims must be reviewed under a plain error standard.⁶ Under the plain error standard of review, “the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the very fairness and integrity of the trial.”⁷ “Furthermore, the doctrine of plain error is limited to material defects which are apparent on the face of the record; which are basic, serious and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice.”⁸

(6) Phillips has failed to show plain error as to his claim that his extradition was illegal. As reflected in the transcript of the February 23, 2001 hearing, Phillips admitted he waived extradition to Delaware. Moreover,

⁶*Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

⁷*Id.*

⁸*Id.*

once Phillips was returned to Delaware, the right to challenge the extradition became moot.⁹

(7) Phillips has failed to show plain error as to his claim that he never received a copy of the capias or warrant containing notice of the underlying violation. The transcript of the February 23, 2001 hearing clearly indicates that Phillips was aware he had violated his probation by leaving Delaware when he stated, “Basically I relocated without permission is what I have done.” Moreover, when told by the Superior Court judge that he could have additional time to review the documentation, Phillips insisted on going forward with the hearing.

(8) Phillips has also failed to show plain error as to his claims that his probation officer violated his civil rights and lied at the VOP hearing, and that the transcript of the February 23, 2001 hearing is incomplete. While Phillips claims that his probation officer harassed him and his parents, he provides no factual support for that statement and does not explain why that should excuse his probation violation in any case. While Phillips claims that his probation officer lied at the February 23, 2001 hearing by linking charges against him

⁹*Shack v. Attorney General of Pennsylvania*, 776 F.2d 1170, 1171-72 (3d Cir. 1985), *cert. denied*, 475 U.S. 1030 (1986).

in Florida to his Delaware charges, the record does not support that statement.

Finally, Phillips offers no factual support for his claim that the transcript of the hearing is incomplete.

(9) While Phillips claims that the Superior Court abused its discretion by failing to give him proper credit for time previously spent at Level V, there is no evidence supporting that claim. To the extent Phillips claims that he is entitled to Level V credit on his Delaware sentence for Level V time served in Florida, that claim is baseless, since it appears the Florida court had already credited that time towards his Florida sentence.

(10) Phillips has also failed to demonstrate plain error in the Superior Court's imposition of a sentence in excess of the TIS guidelines. A defendant has no legal or constitutional right to appeal a statutorily-authorized sentence solely on the basis that it exceeds the TIS guidelines.¹⁰ Phillips does not claim that the sentences imposed by the Superior Court exceed the statutory maximum.¹¹ Nor does Phillips claim that his sentences exceed the periods of

¹⁰*Mayes v. State*, 604 A.2d 839, 845 (Del.1992).

¹¹*Ingram v. State*, 567 A.2d 868, 869 (Del. 1989).

incarceration that had been suspended in the prior sentence.¹² There is, furthermore, no evidence that the Superior Court judge adjudicated Phillips' case with a closed mind.

(11) Finally, Phillips has failed to demonstrate plain error in that portion of his sentence requiring him to enter the Key Program.¹³ Phillips has failed to provide any factual or legal support for his claim that the Key Program is unconstitutional. Also, while implying that the Key Program is solely for inmates with drug abuse problems, Phillips provides no factual support for that contention. Even if true, there would be no abuse of discretion by the Superior Court in sentencing him to the Key Program on that basis, since a 1996 Department of Correction Case Report on Phillips reflects a drug and/or alcohol abuse problem.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

¹²*Id.*

¹³There is statutory authorization for the Key Program pursuant to DEL. CODE ANN. tit. 11, § 4204(c) (8) (1987).