

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WARREN L. REID,	§	
	§	No. 442, 2003
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court of
	§	the State of Delaware, in and
v.	§	for Sussex County in 03M-08-
	§	012.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: October 29, 2003
Decided: January 30, 2004

Before **VEASEY**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

ORDER

This 30th day of January 2004, upon consideration of the opening brief and the motion for the appointment of counsel filed by the appellant, Warren L. Reid, and the motion to affirm filed by the appellee, State of Delaware, it appears to the Court that:

(1) Warren L. Reid has filed an appeal from the Superior Court's August 29, 2003 order that denied his petition for a writ of habeas corpus and modified his sentence. The State of Delaware has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Reid's opening brief that the appeal is without merit. We agree and AFFIRM.

(2) On February 4, 2003, Reid was found to be in violation of probation (VOP) for the sixth time on 1999 convictions¹ and for the second time on 2002 convictions,² and he was sentenced.³ Reid appealed from the February 2003 finding of VOP, but he later withdraw his appeal.⁴ Reid then filed a motion for modification of sentence that was denied.⁵ In July 2003, Reid filed several requests for review of his sentence and a petition for a writ of habeas corpus, all of which claimed that he was unable to participate in the Level V Greentree Program due to medical reasons.

¹Reid pleaded guilty to five counts of Forgery in the Second Degree and was immediately sentenced to a total of ten years at Level V, suspended for one year at Level IV work release, followed by five years at Level III probation. *State v. Reid*, IS99-04-0614, Def. ID No. 9902014511, Lee, J. (Aug. 5, 1999). Reid was subsequently adjudicated guilty of VOP and sentenced in July 2000, January 2001, July 2001, January 2002, and February 2002.

²In 2002, Reid pleaded guilty to Forgery in the Second Degree and Delivery of a Controlled Substance and was sentenced to a total of six years at Level V, suspended after successful completion of the Key Program, for nine months at Level IV residential substance abuse treatment program, followed by four years and six months at Level III aftercare. *State v. Reid*, S02-01-0546I, Def. ID No. 0201009377, Graves, J. (Feb. 19, 2002). Reid was found guilty of VOP in October 2002.

³Reid was sentenced to eight years and three months at Level V, suspended upon successful completion of the Level V Greentree Program, for Level IV residential substance abuse treatment program, and upon successful completion of that program, for Level III Aftercare and Level III probation.

⁴*Reid v. State*, Del. Supr., No. 101, 2003, *appeal withdrawn* (Apr. 11, 2003).

⁵*State v. Reid*, Def. ID Nos. 9902014511, 0201009377, Graves, J. (April 29, 2003).

(3) At a hearing on August 29, 2003, the Superior Court denied Reid's habeas corpus petition. At the same time, due to Reid's inability to complete the Level V Greentree Program, the court modified Reid's VOP sentence.⁶ This appeal followed.

(4) On appeal, Reid alleges that he was denied a fair and impartial VOP hearing, and that the sentence imposed was based on "false information" that he had previously quit the Greentree Program. Moreover, Reid alleges that he was denied the assistance of counsel at the August 29 habeas corpus/sentencing modification hearing and, in a separate motion, he requests the appointment of counsel to represent him in this appeal. Finally, Reid alleges that the Superior Court abused its discretion when it modified the VOP sentence to require that he serve an "extra" year at Level V.

(5) Reid's claims arising from his February 2003 VOP hearing are not a proper subject for habeas corpus review. Reid voluntarily withdrew his appeal from the February 2003 VOP conviction. His habeas corpus petition may not be used as a substitute for a direct appeal.⁷

⁶The court modified Reid's sentence to provide as follows: seven years at Level V, suspended after one year, for one year at a Level IV residential substance abuse treatment program, followed by five years at Level III aftercare.

⁷*Curran v. Woolley*, 104 A.2d 771, 773 (Del. 1954).

(6) In Delaware, the writ of habeas corpus provides relief on a very limited basis.⁸ Habeas corpus only provides “an opportunity for one illegally confined or incarcerated to obtain judicial review of the jurisdiction of the court ordering the commitment.”⁹

(7) Reid is not entitled to habeas corpus relief. It is clear that the Superior Court had jurisdiction over his 1999 and 2002 guilty pleas, as well as the related 2003 VOP proceeding. The Superior Court’s sentencing order of February 2003 is valid on its face, and Reid continues to be held pursuant to that valid commitment, as modified in August 2003.

(8) There is no constitutional or statutory right to counsel in state collateral proceedings, and there is no compelling reason to justify the appointment of counsel in this appeal.¹⁰ Reid cannot demonstrate any abuse of discretion in the Superior Court’s modification of his sentence by requiring that he serve one year at Level V in place of the Level V Greentree Program that he could not participate in for medical reasons.

⁸*Hall v. Carr*, 692 A.2d 888, 891 (Del. 1997).

⁹*Id.*

¹⁰*See Pennsylvania v. Finley*, 481 U.S. 551, 555-56 (1987) (holding that there is no constitutional right to counsel in state collateral proceedings, after exhaustion of direct appellate review); *see Duffy v. State*, 1998 WL 985332 (Del. Supr.) (reiterating that there is no constitutional or statutory right to counsel in reduction of sentence proceedings).

(9) It is manifest on the face of Reid's opening brief that his appeal is without merit. The issues on appeal are controlled by settled Delaware law. To the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that Reid's motion for appointment of counsel is DENIED, and the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice