

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HAROLD J. STEVENSON,	§
	§
Defendant Below-	§ No. 304, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. A. Nos. VK00-01-0212
Plaintiff Below-	§ VK91-03-0109
Appellee.	§ VK99-03-0001

Submitted: September 10, 2002

Decided: September 17, 2002

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

**ORDER**<sup>1</sup>

This 17<sup>th</sup> day of June 2002, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw and the State's response thereto, his attorney's motion for reargument, the Superior Court's report following remand, and the underlying record on remand, it appears to the Court that:

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<sup>1</sup>This Order supersedes the Order issued by this Court in *Stevenson v. State*, Del. Supr., No. 304, 2001, Berger, J. (Feb. 11, 2002), which is hereby withdrawn.

(1) In May 1991, the defendant-appellant, Harold J. Stevenson, was charged with Robbery in the First Degree, Possession of a Hypodermic Needle and Syringe, Resisting Arrest and Criminal Impersonation. On September 6, 1991, Stevenson pleaded guilty to Robbery in the Second Degree as a lesser-included offense of Robbery in the First Degree. He was sentenced to 5 years incarceration at Level V, to be suspended after 3 years for 1 year at Level IV (at least 3 months at residential treatment facility and remainder at halfway house), followed by 1 year at Level III probation. The remaining charges were dismissed by the State.<sup>2</sup>

(2) On February 1, 2000, Stevenson was charged with Criminal Impersonation, Possession of Cocaine and Loitering. On February 29, 2000, he pleaded guilty to Possession of Cocaine and was sentenced to 1 year incarceration at Level V, to be suspended for 1 year at Level III probation. In August 2000, Stevenson was charged with a violation of probation (“VOP”). At a

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<sup>2</sup>The Superior Court modified this sentence on October 14, 1993 to include a June 10, 1991 effective date and additional special conditions, and to provide for a probationary period of 6 months at Level IV (at least 3 months at residential treatment facility and remainder at halfway house), followed by 1 year at Level III.

September 8, 2000 VOP hearing, Stevenson was found to have violated his probation. On the cocaine possession conviction, Stevenson was re-sentenced to 1 year incarceration at Level V, to be suspended after 30 days for 1 year at Level III probation. On the robbery conviction, his probation was continued.

(3) In May 2001, Stevenson again was charged with a VOP. Following a hearing on June 1, 2001, at which Stevenson was represented by counsel, Stevenson was found to have violated his probation and was sentenced, on the robbery conviction, to 2 years incarceration at Level V, to be suspended after 6 months, and, on the cocaine possession conviction, to 11 months incarceration at Level V, including completion of the Key Program.<sup>3</sup>

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<sup>3</sup>Stevenson was also erroneously sentenced for a VOP in connection with a charge of Reckless Burning (VK99-03-0001). This error was corrected by the Superior Court in a subsequent order dated June 6, 2001.

(4) Stevenson's counsel filed a brief and a motion to withdraw pursuant to Rule 26(c), asserting that, based upon a careful and complete examination of the record, there were no arguably appealable issues.<sup>4</sup> By letter, Stevenson's counsel informed Stevenson of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete trial transcript. Stevenson was also informed of his right to supplement his attorney's presentation. Stevenson responded with a brief that raised several issues for this Court's consideration. The State filed a response and moved to affirm the Superior Court's judgment.

(6) Stevenson raised four issues for this Court's consideration regarding his June 1, 2001 VOP hearing. He claimed that: a) he did not have a drug test on February 26, 2001 and, therefore, the Superior Court's finding of a VOP on that basis was improper; b) his VOP notice did not refer to his failure to appear for a counseling session and, therefore, the Superior Court's finding of a VOP on that basis was improper; c) his due process rights pursuant to Superior Court Criminal Rule 32.1 were violated; and d) his 2-year sentence for a VOP in

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<sup>4</sup>*Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

connection with his robbery conviction was improper because he had only 1 year remaining on that sentence.

(7) By Order dated February 11, 2002, we ruled that Stevenson's claims, which we reviewed for plain error,<sup>5</sup> were without merit.<sup>6</sup> Specifically, we concluded that Stevenson's claim that he had no drug test on February 26, 2001 was contradicted by the record and that, even if that claim had merit, there was still a sufficient basis for the finding of a VOP, and no plain error, since Stevenson admitted at the hearing that he had a positive drug test on December 18, 2000, which was a clear probation violation. We also concluded that Stevenson's claim of violations of his due process rights under Superior Court Criminal Rule 32.1, including specifically his right to notice of the charges against him, was unavailing in light of his admission that he had tested positive for illegal drugs. Finally, in the absence of record support for Stevenson's claim

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<sup>5</sup>*Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986); SUPR. CT. R. 8.

<sup>6</sup>To the extent Stevenson claimed he was sentenced improperly for Reckless Burning, we further ruled that any such claim was moot, based upon the Superior Court's June 6, 2001 order.

that his 2-year sentence for the robbery conviction was improper, we concluded that that claim, too, was meritless.

(8) Following this Court's denial of Stevenson's direct appeal,<sup>7</sup> Stevenson's counsel filed a motion for reargument on Stevenson's behalf on the basis that Stevenson's 1991 sentence for robbery, including the probationary period, may have been satisfied prior to June 1, 2001, the date the Superior Court sentenced Stevenson for the VOP. By Order dated May 9, 2002, we concluded, in the interest of justice, that the matter should be remanded to the Superior Court for a determination of whether any portion of Stevenson's 1991 robbery sentence remained to be served and, therefore, whether the Superior Court had jurisdiction on June 1, 2001, to sentence Stevenson for a VOP in connection with that conviction.

(9) On June 6, 2002, the Superior Court held a hearing on remand. Based on the evidence presented, including 2 reports dated June 6, 2002 from the Investigative Services Office, the Superior Court determined that Stevenson's 1991 robbery sentence expired in 1997, well before he was sentenced for the

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<sup>7</sup>*Stevenson v. State*, Del. Supr., No. 304, 2001, Berger, J. (Feb. 11, 2002).

VOP on June 1, 2001.<sup>8</sup> Because Stevenson had no other unserved Level V sentences as of June 6, 2002, the Superior Court ordered him released forthwith, in accordance with the recommendation of the Investigative Services Offices and without opposition from the State. That same date, in two separate orders, the Superior Court vacated the June 1, 2001 sentence and modified another of Stevenson's criminal sentences<sup>9</sup> to reflect credit for the 68 days Stevenson had served in error at Level V in connection with the 1991 robbery sentence.

(10) We have reviewed carefully the Superior Court's report following remand as well as the underlying record and, in light of Stevenson's release on June 6, 2002 and in the interest of efficiency, adopt the findings of the Superior

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<sup>8</sup>It appears, based upon the findings of the Superior Court on remand, that the Superior Court relied upon information contained in an August 2000 VOP report in sentencing Stevenson to additional Level V time in connection with the 1991 robbery. The report erroneously indicated that Stevenson committed his VOP's while on probation in connection with the 1991 robbery conviction.

<sup>9</sup>Stevenson had been sentenced for Possession of Marijuana on July 24, 2001 in IK01-06-0628.

Court with respect to Stevenson's claim that his 2-year VOP sentence in connection with his 1991 robbery conviction was improper.

NOW, THEREFORE, IT IS ORDERED that:

- (1) This Court's February 11, 2002 Order is WITHDRAWN;
- (2) As to Stevenson's first three claims of error on appeal, the State's motion to affirm is GRANTED, the judgment of the Superior Court is AFFIRMED and counsel's motion to withdraw is moot; and
- (3) As to Stevenson's claim that his 2-year VOP sentence in connection with his 1991 robbery conviction was improper, the findings of the Superior Court on remand are ADOPTED and the February 25, 2002 motion for reargument is DISMISSED AS MOOT.

BY THE COURT:

/s/ Carolyn Berger  
Justice