

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID DOLAN,	§
	§ No. 469, 2023
Defendant Below,	§
Appellant,	§ Court Below–Superior Court
	§ of the State of Delaware
v.	§
	§ Cr. ID No. 0805016857 (K)
STATE OF DELAWARE,	§
	§
Appellee.	§

Submitted: May 20, 2024

Decided: July 26, 2024

Before **SEITZ**, Chief Justice; **VALIHURA** and **GRIFFITHS**, Justices.

ORDER

After consideration of the appellant’s opening brief, the appellee’s motion to affirm, and the Superior Court record, it appears to the Court that:

(1) The appellant, David Dolan, appeals the Superior Court’s order sentencing him for a violation of probation (“VOP”). The State has filed a motion to affirm the judgment below on the ground that it is manifest from the face of Dolan’s opening brief that his appeal is without merit. We agree and affirm.

(2) In 2008, Dolan was charged by indictment with 120 offenses relating to his sexual abuse of two girls under the age of 16 and his possession of child pornography. On October 1, 2008, Dolan entered a “no contest” plea to one count of second-degree rape and pleaded guilty to two counts of second-degree unlawful

sexual contact as lesser included offenses of first-degree unlawful sexual contact. In exchange for his plea, the State agreed to dismiss the remaining 117 charges and forgo a presentence investigation. The Superior Court immediately sentenced Dolan in accordance with the plea agreement to an aggregate of 17 years of unsuspended incarceration followed by decreasing levels of supervision. The Superior Court also imposed agreed-upon special conditions, including one that prohibits Dolan from having contact with a child under the age of 16 unless permitted by a Family Court visitation order. Dolan did not appeal his convictions or sentence.

(3) In September 2023, Dolan's probation officer filed an administrative warrant, alleging that Dolan had violated the terms of his probation by visiting an arcade located on the Rehoboth Beach boardwalk over Labor Day weekend. On November 27, 2023, the Superior Court held a contested VOP hearing, at which the State presented, among other evidence, video footage showing Dolan at the arcade. Following the hearing, the Superior Court found that Dolan had violated the terms of his probation when he entered and moved about the arcade where young children were obviously present. The Superior Court revoked Dolan's conditional release and re-sentenced him to one year of Level III probation for each of his three convictions. This appeal followed.

(4) In his opening brief on appeal, Dolan argues that the Superior Court erred when it found that he had violated the terms of his probation because: (i) he

did not have “fair warning” that his conduct might lead to the revocation of his probation, and (ii) his newly assigned probation officer enforced the conditions of his probation more stringently than his prior probation officer. Dolan’s arguments are unavailing.

(5) Probation is an “act of grace,” and the Superior Court has broad discretion when deciding whether to revoke a defendant’s probation.¹ Specifically, the Superior Court need only be satisfied that “the conduct of the probationer has not been as good as required by the conditions of probation.”² Once the Superior Court determines that a defendant has violated the terms of his probation, the Superior Court may impose any period of incarceration up to and including the balance of Level V time remaining on the original sentence.³

(6) Having carefully reviewed the record—including the transcript of the November 27, 2023 VOP hearing—we are satisfied that the evidence presented fairly established that Dolan, who admitted that he knew that the conditions of his probation prohibited him from frequenting Funland (another establishment located on the Rehoboth Beach boardwalk that caters to young children and their families), violated the terms of his probation when he entered and lingered in a nearby arcade that caters to a similar clientele.

¹ *Kurzmann v. State*, 903 A.2d 702, 716 (Del. 2006).

² *Id.* (citation omitted).

³ 11 *Del. C.* § 4334(c); *Pavulak v. State*, 880 A.2d 1044, 1046 (Del. 2005).

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

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice