

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARVIN HOLMES,	§
	§
Defendant Below-	§ No. 328, 2013
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 1105026213
Plaintiff Below-	§
Appellee.	§

Submitted: October 11, 2013  
Decided: November 6, 2013

Before **HOLLAND**, **BERGER** and **RIDGELY**, Justices.

**ORDER**

This 6th day of November 2013, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The defendant-appellant, Marvin Holmes, filed this appeal from the Superior Court's sentence for his third violation of probation (VOP). We find no merit to Holmes' appeal. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that Holmes pled guilty in October 2011 to one count of Aggravated Menacing. The Superior Court immediately sentenced him to two years at Level V incarceration to be suspended immediately for two years of probation. In May 2012, the Superior Court found Holmes in violation of his probation and sentenced him to two years at Level V incarceration, with credit for

117 days served, to be suspended for eighteen months at Level IV home confinement, to be suspended after six months for Level III probation. In June 2012, Holmes was charged with his second VOP. In August 2012, he was found in violation and sentenced to one year and eight months at Level V, to be suspended after serving forty-five days in prison for eighteen months at Level IV work release, to be suspended after six months for Level III probation.

(3) On October 22, 2012, Holmes was given a pass by the Plummer Center to meet with his lawyer. Holmes failed to return from that appointment. He was arrested several months later in Pennsylvania. He was charged with this third VOP. The State also charged him with a new criminal offense—Escape after Conviction—for his failure to return to the Plummer Center. In May 2013, the Superior Court found that Holmes had violated his probation and sentenced him to one year and 192 days at Level V incarceration to be followed by one year at Level II probation. Holmes filed an appeal from the Superior Court’s order sentencing him for his third VOP.

(4) Holmes’ sole argument on appeal is difficult to follow. He appears to argue that he should not have been forced to appear at a contested fast track VOP hearing because the criminal indictment against him for Escape after Conviction was falsified. Holmes admits in his reply brief, however, that he did, in fact,

violate his probation by failing to return to the Plummer Center. Nonetheless, he argues that he was denied due process at his VOP hearing.

(5) We disagree. In Delaware, a defendant accused of a VOP is not entitled to a formal trial.<sup>1</sup> Nonetheless, certain minimum requirements of due process must be satisfied.<sup>2</sup> Those requirements are set forth in Superior Court Criminal Rule 32.1. Rule 32.1 provides that a defendant accused of a VOP is entitled to: (i) a bail hearing; (ii) written notice of the alleged violation; (iii) disclosure of the evidence against the defendant; (iv) an opportunity to appear and present evidence; (v) an opportunity to question adverse witnesses; and (vi) notice of the right to retain counsel.<sup>3</sup>

(6) The record in this case reflects that all of these due process requirements were met. The transcript of the VOP hearing reflects that Holmes appeared at the hearing with counsel. He was given the opportunity to cross-examine the State's witnesses against him, and he was afforded the opportunity to testify in his own defense. The State proved by a preponderance of the evidence that Holmes had violated the terms of his probation by leaving the Plummer Center

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<sup>1</sup> *Jenkins v. State*, 8 A.3d 1147, 1153 (Del. 2010).

<sup>2</sup> *Id.* (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 786 (1973)).

<sup>3</sup> Del. Super. Ct. Crim. R. 32.1(a) (2013).

on a limited pass and failing to return.<sup>4</sup> Under the circumstances, we find no due process violation or any error in the Superior Court's finding that Holmes had violated his probation. Accordingly, the Superior Court's judgment shall be affirmed.

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

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>4</sup> See *Kurzmann v. State*, 903 A.2d 702, 716 (Del. 2006) (VOP need only be proven by a preponderance of evidence).