IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILSON E. BENNETT,	)
	) No. 253, 1999
Defendant Below	)
Appellant,	)
	) Court Below: Superior Court of
	) the State of Delaware in and for
v.	) Sussex County
	)
STATE OF DELAWARE,	) Cr.A. No. 98-02-0082
	) Cr. I.D. No. 9808020258
Prosecution, below	)
Appellee.	)

Submitted: August 29, 2000
Decided: October 17, 2000

Before **VEASEY**, Chief Justice, **WALSH** and **STEELE**, Justices.

ORDER

This 17th day of October, 2000, upon consideration of the briefs of the parties, it appears to the Court that:

1. The Sussex County Superior Court, after a violation of probation ("VOP") hearing, revoked Bennett's probation and sentenced him to a nine-year, ten-month, and eleven-day sentence at Level V. Bennett appeals, claiming, based upon statements made by the Superior Court Judge at earlier hearings, that the Superior Court could neither be neutral nor detached at his VOP hearing, and, thus, abused its discretion by revoking Bennett's probation and imposing a significant period of incarceration.

2. The standard of review on appeal from the revocation of probation is whether the Court abused its discretion. ***Brown v. State***, Del. Supr., 249 A.2d 269 (1968).

3. On November 25, 1998, Bennett entered a plea of guilty to one count of Unlawful Sexual Intercourse in the Third Degree. The Superior Court issued a stern warning against any future such action,[1] after which the Court sentenced Bennett to a suspended sentence for eighteen months at Level III, followed by seven and a half years at Level II. As a condition of the probation, Bennett was to "have no unsupervised contact with minors under the age of eighteen," and he was to telephone his probation officers daily.

4. On January 19, 1999 Bennett was arrested for driving under the influence and knowingly permitting a minor to operate his motor vehicle. Subsequently, Bennett's probation officers filed a violation of probation alleging that Bennett had contact with three minors who were in his vehicle and that Bennett had failed to contact his parole officers between January 14 and January 19. On February 12, a probation hearing was held, and the Superior Court expressed its concern about the current situation in light of the November sentence; however, the matter was postponed until after the criminal charges had been resolved.[2]

[1] One such warning indicated"[i]f you commit such a crime again and are convicted, you will go to jail for the rest of your life. You will never see the outside of a prison. It is mandatory; do you understand?"
[2] The Superior Court stated "If he is violated for the no unsupervised contact with a minor, he may very well receive a substantial sentence. I am very concerned."

5. At the rescheduled hearing on April 6, 1999, two of Bennett's probation officers attempted to testify to unrelated matters, but the Court directed the officers not to discuss those issues. The Court found that Bennett had violated his probation and sentenced him accordingly. It is that sentence which Bennett appeals.

6. Based upon the earlier statements, Bennett argues that the Superior Court could be neither neutral nor detached at his April 6, 1999 hearing because the Superior Court had a preconceived notion at the April 6, 1999 hearing and brought a "closed mind" to the hearing which violated Bennett's due process rights. *See* ***Bailey v. State***, Del. Super., 450 A.2d 400 (1982).

7. Bennett's argument is without merit. A strong judicial expression of concern does not imply that the judge is biased or has a "closed mind" at sentencing. ***United States v. Bertoli***, 3d Cir., 40 F.3d 1384 (1994). Furthermore, the Superior Court's actions as a whole demonstrate that there was no lack of fundamental fairness throughout the proceedings. The Superior Court postponed the February 12, 1999 probation hearing to provide Bennett time to obtain witnesses, ordered a pre-sentence investigation, and provided Bennett the opportunity to address the Superior Court during the sentencing hearing. In addition, the Superior court provided Bennett with a possibility for early release from Level V after five years if he successfully completes the Family Problems Program.

8. Pursuant to 11 ***Del. C.*** §4334(c), after determining that an accused violated probation, the Superior Court may "require the probation violator to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which originally had been imposed." The Superior Court found Bennett violated his probation by failing to report daily by telephone and by having unsupervised contact with minors.

9. Because this Court finds the Superior Court did not abuse its discretion in reinstating Bennett's sentence after he violated his probation, the Court does not address the State's argument that Bennett forfeited appellate review of his claim that the Superior Court had a "closed mind."

10. For all the reasons state above, the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Myron T. Steele

Justice