

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRUCE WAPLES,	§	
	§	No. 75, 2000
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County
	§	Cr.A.Nos. 96-05-0085 - 0087
STATE OF DELAWARE,	§	& Cr.A.Nos. 97-07-0093 -
	§	0095.
Plaintiff Below,	§	Def. ID No. 9604004784
Appellee.	§	Def. ID No. 9706017979

Submitted: July 18, 2000
Decided: August 14, 2000

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

ORDER

This 14th day of August 2000, upon consideration of the appellant's opening brief and the State of Delaware's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) In September 1996, the appellant, Bruce Waples, pleaded guilty in the Superior Court to Criminal Mischief, First Degree Trespass (as a lesser-included offense of Second Degree Burglary), Misdemeanor Theft, and Third Degree Assault. Waples was sentenced to four years at Level V suspended for four years at Level III followed by four years at Level II.

(2) On March 10, 1998, the Superior Court issued a notice directing Waples to appear for a violation of probation (“VOP”) hearing on March 20, 1998. The Superior Court’s notice advised Waples that he should contact his attorney if he desired to have counsel at the hearing. Waples appeared *pro se* at the March 20, 1998 hearing. Waples was adjudged guilty of VOP and was sentenced.

(3) On August 13, 1998, the Superior Court issued a notice directing Waples to appear for a VOP hearing on August 21, 1998. Again, the Superior Court advised Waples that he should contact his attorney if he desired to have counsel at the hearing. Waples appeared *pro se* at the August 21, 1998 hearing. Waples was adjudged guilty of VOP and was sentenced.

(4) On January 19, 2000, the Superior Court issued a notice directing Waples to appear for a VOP hearing on January 28, 2000. In that notice, the Superior Court did *not* specifically advise Waples that he should contact his attorney if he desired to have counsel at the hearing.

Waples appeared *pro se* at the January 28, 2000 hearing. Waples was adjudged guilty of VOP and was sentenced.¹ This appeal followed.

(5) On appeal, Waples alleges that the January 28 VOP hearing violated the due process rights afforded to him by Superior Court Criminal Rule 32.1² and the Due Process Clause of the Fourteenth Amendment. Specifically, Waples complains that the notice scheduling the January 28 VOP hearing was inadequate because he received the notice only four days before the hearing and because the notice did not advise him that he had the right to retain counsel. Waples also complains that: (i) he did not receive a preliminary hearing; (ii) he was denied the right to cross-examine his accusers at the VOP hearing; (iii) he was entitled to the appointment of counsel; and (iv) there was insufficient evidence to find him guilty of VOP. Waples' claims are without merit.

¹ It appears from the record that Waples pled guilty on October 1, 1997, to charges of Possession of Marijuana and Trespass in the Second Degree. Waples was sentenced on December 11, 1997. At the VOP hearing on January 28, 2000, Waples was adjudged guilty of VOP as to both the 1996 and the 1997 Superior Court convictions.

² Superior Court Criminal Rule 32.1 provides that a person charged with a violation of probation shall be given:

- (A) Written notice of the alleged violation;
- (B) Disclosure of the evidence against the person;
- (C) An opportunity to appear and to present evidence in the person's own behalf;
- (D) The opportunity to question adverse witnesses; and
- (E) Notice of the person's right to retain counsel and, in cases in which fundamental fairness request, to the assignment of counsel if the person is unable to retain counsel.

(6) Contrary to Waples' contention, it appears from the record that Waples was afforded an "inquiry . . . in the nature of a 'preliminary hearing'."³ Pursuant to a *capias* return, Waples appeared in the Superior Court on January 18, 2000, on an administrative warrant issued by Waples' probation officer. At that time, a Superior Court judge advised Waples that he was accused of having violated "Safe Streets,"⁴ and that a VOP hearing would be held on January 28, 2000.

(7) Furthermore, it does not appear that Waples was denied the opportunity to question adverse witnesses. There were no witnesses at the January 28 hearing. Instead, it appears that the Superior Court relied upon the probation officer's report to establish that Waples was not at his residence and did not report to his probation officer when he was told.⁵

(8) It is true that the Superior Court's January 19 notice of VOP hearing did *not* advise Waples that he had the right to retain counsel. The

³ *Morrissey v. Brewer*, 408 U.S. 471, 484 (1972).

⁴ "Operation Safe Streets" is a statewide joint police and probation program that is designed to apprehend offenders who are not complying with the terms of their probation.

⁵ See 11 *Del. C.* § 4334(c) (establishing that a VOP hearing may be informal or summary); see also *Brown v. State*, Del. Supr., 249 A.2d 269, 272 (1968) (providing that hearsay evidence is admissible at a VOP hearing so long as there is competent evidence to prove the alleged violation).

record reflects, however, that the Superior Court's previous two notices of VOP hearings *did* advise Waples that he had a right to retain counsel. Thus, it appears that Waples was familiar with the procedure for retaining counsel for a VOP hearing. Furthermore, Waples did not object to his lack of legal representation at the January 28 hearing nor did he request counsel. Accordingly, any error in the form of notice was harmless.

(9) Next, contrary to Waples' claim on appeal, it does not appear that the Superior Court was obligated, under the circumstances of this case, to appoint counsel to represent Waples at the January 28 VOP hearing. This proceeding did not present any substantial or complex issues that would entitle Waples to the appointment of counsel.⁶

(10) Finally, Waples claims that there was insufficient evidence to support the revocation of his probation. It appears from the VOP hearing transcript, however, that Waples admitted to violating his probation.⁷ The

⁶ *Jones v. State*, Del. Supr., 560 A.2d 1056, 1057 (1989).

⁷ The hearing transcript reflects the following:

THE COURT: Mr. Waples, what do you want to say?

THE DEFENDANT: All I have to say really is that I wasn't really stable. I was at that address because I was like back and forth, because I wasn't really stable. It wasn't no need telling him that I changed my address because I wasn't there at all times. So I just left my address at that, and Safe Streets just happened to run up on me and I had to take what was coming.

Hr'g Transcript at 2-3.

evidence in a VOP hearing need only be “such as to reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the terms and conditions of probation.”⁸ Waples’ claim of insufficient evidence is without merit.

(11) In this case, it is manifest on the face of Waples’ opening brief that the appeal is without merit. The issues raised are clearly controlled by settled Delaware law, and to the extent the issues on appeal implicate the exercise of judicial discretion, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State’s motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

s/Joseph T. Walsh
Justice

⁸ *Brown v. State*, Del. Supr., 249 A.2d 269, 272 (1968)(quoting *Manning v. United States*, 161 F.2d 827, 829 (5th Cir. 1947)).