

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)
)
 v.) Case. No. 0907006692
)
 JEFFREY BURRAGE,)
)
 Defendant.)
)

Submitted: February 19, 2010
Decided: March 30, 2010

MEMORANDUM OPINION

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**ON DEFENDANT'S MOTION IN SUPPORT OF
AUTOMATIC TERMINATION OF PROBATION**

Defendant, Jeffrey Burrage, brings this motion based upon 11 *Del. C.* §4333(a), alleging his probationary term automatically terminated upon the expiration date, and does not require an Order of the Court. Thus, he alleges a violation of such probation submitted after the calculated expiration term is impermissible, even though the violation occurred during the probationary period. Therefore, he argues that the administrative search conducted on July 7, 2009 is invalid because he was no

longer subject to probation supervision and the fruits of the search must be suppressed.

Facts and Procedural History

The facts which led to these proceedings indicate that on June 23, 2008, Jeffrey Burrage (hereinafter "Burrage" or "Defendant") was found guilty of Driving Under the Influence of Alcohol (hereinafter "DUI") and sentenced by the Court to sixty (60) days at Level V suspended for one (1) year of Level I probation. As required, Defendant registered with the Office of Probation and Parole, and agreed to comply with the conditions. Among other conditions, Defendant agreed to: (1) refrain from committing any new criminal or motor vehicle offense; (2) report to Probation and Parole any new arrest, conviction, or police contact within seventy-two (72) hours of its occurrence; (3) not possess or consume a controlled substance or other dangerous drug unless prescribed lawfully; and (4) complete the course of instruction and/or program of rehabilitation as required by 21 *Del. C.* § 4177(c).

On April 13, 2009, Defendant was arrested and charged with Driving Without Insurance, Failure to Signal, Driving While his License was Suspended/Revoked, Possession of a Non-Narcotic Schedule IV Controlled Substance, Possession of Marijuana, Endangering the Welfare of a Child, and Carrying a Concealed Deadly Weapon. Defendant failed to report this arrest to his supervising probation officer, Bonnie C. Stark (hereinafter, "Stark") as required by the conditions of probation. Officer Stark did not discover the arrest, which is a violation of the probation condition when defendant failed to report such, until she conducted a DELJIS

inquiry on June 22, 2009. Pursuant to Office of Probation and Parole procedures, Stark submitted a violation of probation report (hereinafter "VOP") to her supervisor on June 22, 2009.

Officer Cline, Mrs. Stark's supervisor, approved the violation report and it was submitted to the Court on June 24, 2009. The VOP report was docketed with the Court on July 8, 2009. The violation hearing was scheduled for August 7, 2009; rescheduled to August 28, 2009, due to pending charges in Superior Court; and eventually heard on October 2, 2009. At that hearing, Defendant was found guilty of violating his probation and discharged unimproved.

On September 1, 2009, Burrage pled guilty in the Superior Court to the offense of Driving While his License Was Suspended or Revoked, and Possession of Marijuana. He was immediately sentenced to six (6) months at Level 5, suspended for one (1) year at Level 2 probation.

Burrage was sentenced to a term of one year; therefore, his probationary period, if not extended, was to expire on June 22, 2009. However, on July 7, 2009, after defendant's one-year term of probation would have expired, but prior to the VOP hearing, New Castle County Safe Streets officers went to Defendant's residence and executed an arrest warrant, for the defendant. After taking Defendant in custody, the officers conducted an administrative search of his residence, where they found marijuana. On July 8, 2009, the Defendant was charged with Possession of Marijuana, Possession of Drug Paraphernalia and Unlawfully Dealing with a Child. Defendant filed this Motion to Suppress on December 10, 2009, challenging the

administrative search as untimely. A suppression hearing was held on January 15, 2010 and the Court reserved decision.

Analysis

The determination of the validity of Administrative search turns on whether the defendant was subject to the Department of Correction's supervision at the time it was executed. The relevant provisions of *11 Del. C. § 4333*¹ provides as follows:

- (a) The period of probation or suspension of sentence shall be fixed by the Court subject to the provision of this section. Any probation or suspension of sentence may be terminated by the Court at any time and upon such termination or upon termination by expiration of a term, an order to this effect shall be entered by the Court.
- (b) The length of any probation or suspension of sentence shall be limited to:
 - (2) . . . One year, for any offense not otherwise specified . . .
- (c) The limitations set forth in (b) and (c) of this section may be exceeded by up to 90 days by the sentencing Court if it determines that the defendant has not yet completed a substance abuse treatment program ordered by the Court. . .

It is further provided by *11 Del. C. § 4334*, "Arrest for violation of conditions;" subsequent disposition;

- (c) . . . If [the] violation is established, the Court may continue or revoke the probation or suspension of sentence.

In support of his argument, Defendant points to *11 Del. C. § 4333(a)* for the position that his probation terminated automatically on June 22, 2009. He further argues that the failure to issue a probation violation warrant prior to the expiration of

¹ DEL.CODE ANN. tit. 11, § 4333.

the probationary term invalidates the administrative search conducted pursuant to that violation.

The State responds by arguing that, a violation report submitted after the expiration of a probationary term is permissible, so long as the violation occurred during the probationary period. The State also argues that, 11 *Del. C.* § 4333(a) must be read logically to afford Probation and Parole a reasonable opportunity to determine whether an individual violated his probation after the expiration of the probationary period.

The law of Delaware is clear that the Court may impose sentence for violation of probation after that probationary period has expired.² In *Haines v. State*, the Delaware Supreme Court held that when a VOP occurs during a term of probation, it is immaterial whether the Office of Probation and Parole filed a VOP report with the Court *during or after* the term of probation.³ The Court opined, “so long as the violation occurred during the probationary period, which it did in Haine’s case, *it is of no consequence that the VOP report was filed after the probationary period expired.*”⁴

Therefore, defendant’s argument that the violation hearing was invalid when held after June 22, 2009, lacks merit. As in *Haines*, the Defendant violated the conditions of his probation on April 13, 2009 when he committed motor vehicle and criminal offenses, failed to report police contact within seventy-two (72) hours, and complete the DUI program as ordered. The fact that the violation was filed after the probation term would have expired does not invalidate the violation. To conclude as

² *Haines v. State*, 2002 WL 243324, at *1 (Del.Supr.) (citing *Tiller v. State*, 257 A.2d 385 (1969)).


³ *Haines v. State*, 2002 WL 243324, at *1 (Del.Supr.) (emphasis added).

⁴ *Id.* (emphasis added).

the defendants argue would permit a defendant to ignore the terms of probation, evade capture for the term, and not be subject to any consequence. This analysis would be to reward the defendant for misbehavior and make probation enforcement meaningless. Further, if the Defendant had reported his April 13, 2009 arrest as required by the conditions of his probation, the Office of Probation and Parole almost certainly would have discovered it well before the Defendants probation expired. Since the acts which constitute the violation occurred during the probationary period, a finding of violation was permissible even after that period of probation had expired.

Accordingly, defendant's motion is **Denied**.

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Alex J. Smalls
Chief Judge

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