

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

March 29, 2010

Torrey D. Roberts
1351 Oak Street
Wilmington, DE 19805

RE: State of Delaware v. Torrey D. Roberts
Def. ID No. 0506018654
Letter Opinion

Date Submitted: January 21, 2010

Dear Mr. Roberts:

This is my decision on your Motion for Postconviction Relief. You were on Supervision Level I-Restitution Only Probation for convictions on three counts of Forgery in the Third Degree and one count of Conspiracy in the Second Degree when your probation officer cited you for violating your probation by not paying your restitution, as you had been ordered to do. A violation of probation hearing was held on September 4, 2009. I found you in violation of your probation and re-sentenced you to a total of 21 months at Supervision Level V, suspended for six months at Supervision Level IV-Work Release, followed by one year at Supervision Level II. You were to be held at the Violation of Probation Center until space became available at Work Release.

You allege that (1) you could not pay your restitution because you lost your job, (2) the Department of Correction violated your new sentence by transferring you to the Webb Correctional Facility, and (3) you were not provided with a lawyer during your violation of probation hearing. This is your first Motion for Postconviction Relief and it was filed in a

timely manner. Therefore, your motion is not barred by Superior Court Criminal Rule 61(i)(1).

I. Restitution

You allege that you did not pay your restitution because you lost your job at a grocery store. While this may explain why you stopped paying your restitution, it does not excuse it. This allegation is without merit.

II. Sentence Order

You allege that the Department of Correction violated your Sentence Order by moving you from the Sussex Violation of Probation Center to the Webb Correctional Facility, making it harder for you to go to Work Release and get a job. You allege further that it takes so long to get into Work Release at the Webb Correctional Facility that many inmates “max-out” and move to a lower level of probation without ever going to Work Release. Your Sentence Order provided that you would be held at Supervision Level IV until a spot was open for you at Work Release. This is exactly what happened in your case. The Court cannot control when space becomes available at a particular correctional institution or for a particular program. Moreover, this transfer did not cause you to be held any longer at Supervision Level IV than you were obligated to be held under your new sentence. This allegation is without merit.

III. Representation

You allege that you were not provided with a court-appointed attorney for your violation of probation hearing. The United States Constitution “does not require the

appointment of counsel to represent an indigent probationer in all instances.”¹ The United States Supreme Court “has held that counsel should be provided in cases where the probationer raises ‘a timely and colorable claim (i) that he has not committed the alleged violation of the conditions upon which he is at liberty; or (ii) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, and that the reasons are complex or otherwise difficult to develop or present.’”² This was your fourth violation of probation hearing on these charges. The most recent violation of probation hearing was initiated because you failed to comply with your restitution payment schedule. In your Motion for Postconviction Relief you admit that you did not make the required restitution payments. The fact that a violation occurred was not in question, nor was it in dispute. The reasons for your violation were not novel or complex. You simply did not have a job. Therefore, you were not entitled to a court-appointed attorney for your violation of probation hearing. This allegation is without merit.

CONCLUSION

Your Motion for Postconviction Relief is DENIED.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

cc: Prothonotary’s Office

¹ *Jones v. State*, 560 A.2d 1056, 1056 (Del. 1989).

² *Jones*, 560 A.2d at 1058, citing *Gagnon v. Scarpelli*, 411 U.S. 778, 790 (1973).