

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN R. DRAYER, JR.,	§	
	§	No. 636, 2002
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware, in and
v.	§	for Sussex County in Cr.A. No.
	§	VS97-06-0646-01.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9605014843

Submitted: April 10, 2003
Decided: July 16, 2003

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

ORDER

This 16th day of July 2003, upon consideration of the appellant’s opening brief and the State’s motion to affirm, it appears to the Court that:

(1) On June 30, 1997, John R. Drayer, Jr. pleaded no contest to Reckless Endangering. Drayer was immediately sentenced to five years at Level V, suspended for three years at Level II probation.

(2) On November 25, 1997, the Superior Court issued a capias for Drayer’s arrest for violating his probation. Drayer was returned to Delaware on October 7, 2002, and a violation of probation (VOP) hearing was held on October 18, 2002.

Drayer was convicted of VOP and was sentenced to three years at Level V, suspended after four months for sixty days at Level IV VOP Center. This appeal followed.

(3) During the course of this appeal, Drayer has inundated the Court with papers, including: (i) copies of papers purportedly filed in the United States District Court for the District of Delaware, the Third Circuit Court of Appeals and the United States Supreme Court; (ii) various motions to “vacate” the decisions issued in prior appeals in this Court; (iii) documents that purport to “supplement” or “amend” the notice of appeal in this Court; (iv) a document entitled “reargument/rehearing en banc”; (v) a notice of interlocutory appeal; (vi) a petition for an extraordinary writ; and (vii) a certificate of question of law. To the extent that Drayer’s papers are intelligible, and most are not, they clearly have no bearing on this appeal and thus have not been considered by the Court.

(4) In his opening brief, Drayer appears to argue that (i) he did not receive a fair VOP hearing; (ii) the Superior Court abused its discretion when it sentenced him in 2002 for a VOP that occurred in 1997; and (iii) the Superior Court abused its discretion in 1997 when it accepted Drayer’s guilty plea to Reckless Endangering. Drayer’s claims are without merit or are unavailing.

(5) There is no basis in the record for Drayer’s claim that he did not have a full and fair VOP hearing. Drayer had written notice of the alleged violation. Drayer

then had an opportunity to appear and to present evidence on his own behalf.¹ Drayer denied violating his probation, but he admitted that he did not return to Delaware in 1997 as instructed by his probation officer. Drayer's admission was sufficient competent evidence to support the Superior Court's finding of VOP.²

(6) Drayer's conduct that led to the VOP charge occurred in 1997, within the first year of Drayer's probationary period. Thereafter, a capias issued in a timely manner for Drayer's arrest. The fact that Drayer absconded from probation and was not returned to Delaware until 2002 did not affect the validity of the probation revocation and sentence.³

(7) Drayer's claims about his 1997 guilty plea are unavailing. Those claims are not properly before us in this appeal from Drayer's October 2002 VOP conviction and sentence.

1

Super. Ct. Crim. R. 32.1(a); *Gibbs v. State*, 760 A.2d 541, 543 (Del. 2000) (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 786 (1973)).

2

Brown v. State, 249 A.2d 269 (Del. 1968).

3

Larson v. State, 1995 WL 236650 (Del. Supr.); *Tiller v. State*, 257 A.2d 385, 387 (Del. 1969).

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/ Myron T. Steele
Justice