

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRANDON M. COATES,	§
	§ No. 198, 2012
Defendant Below,	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware, in
	§ and for New Castle County
STATE OF DELAWARE,	§
	§ Cr. ID No. 0609014541
Plaintiff Below,	§
Appellee.	§

Submitted: August 30, 2012  
Decided: October 5, 2012

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 5<sup>th</sup> day of October 2012, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Brandon M. Coates, filed an appeal from the Superior Court’s March 20, 2012 violation of probation (“VOP”) sentencing order. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is manifest on

the face of the opening brief that this appeal is without merit.<sup>1</sup> We agree and affirm.

(2) The record reflects that, in May 2008, Coates entered a plea of guilty to one count of Assault in the Second Degree. He was sentenced to 4 years and 6 months of Level V incarceration, to be suspended after 2 years for 1 year of Level III probation. Coates was found to have committed a VOP on three subsequent occasions. Coates filed an appeal from the Superior Court's sentencing order for his second VOP. This Court affirmed the Superior Court's judgment.<sup>2</sup> Coates' instant appeal is from the Superior Court's sentence imposed for his third VOP, consisting of 1 year at Level V, to be suspended after 6 months for 1 year of Level III probation.

(3) The record further reflects that the Superior Court held a VOP hearing on March 20, 2012. Coates was represented by counsel. One of Coates' probation officers testified that, on March 13, 2012, a starved pit bull was found in the basement of the address Coates had provided to Probation and Parole. Another of his probation officers testified that, on March 7, 2012, Coates was stopped by police while driving with a suspended license and in violation of his curfew. At that time, Coates told

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<sup>1</sup> Supr. Ct. R. 25(a).

<sup>2</sup> *Coates v. State*, Del. Supr., No. 160, 2011, Holland, J. (Nov. 8, 2011).

the officer he was staying at the Super Lodge Motel. However, a key card for the Budget Inn was found on his person during a custodial search. Coates provided the officer with two room numbers at the Budget Inn, but then stated that he was staying at the Hollywood. The officer testified that Coates has a history of providing false addresses to Probation and Parole and, as a result, it is impossible to supervise him adequately.

(4) Coates, through his counsel, admitted that he switched motel rooms and failed to inform Probation and Parole of his whereabouts. He conceded that he has a pattern of moving from motel room to motel room ever since the house where he was living was destroyed in a fire. Coates explained that he has been forced to move around, because he sometimes is unable to pay for a particular motel room and sometimes motel management will not permit him and his five children to live in the same room. One of Coates' probation officers testified that, after Coates' home burned down, he was given a \$1,200 voucher by the State to pay for an apartment, but that he has never found one. Although Coates testified that he is doing all he can to inform Probation and Parole of his whereabouts, the presiding judge did not credit his testimony.

(5) In this appeal, Coates claims that his due process rights were violated at his VOP hearing in that: a) he did not receive a preliminary

hearing, b) he did not receive written notice of the hearing or disclosure of the evidence against him, c) the presiding judge was neither neutral nor detached, and d) the presiding judge did not provide him with a written statement as to the evidence relied upon in finding the VOP. Coates' primary complaint appears to be that VOP procedures in Delaware, which he contends do not satisfy the minimal requirements of due process, are not the same as those in Pennsylvania.

(6) A VOP hearing is not a criminal trial and, as such, does not require the full panoply of constitutional protections afforded a defendant at a criminal trial.<sup>3</sup> A probationer charged with a VOP must be provided notice of the violation, notice of the evidence against him, an opportunity to appear and present evidence in his behalf, an opportunity to question adverse witnesses, and notice of his right to counsel.<sup>4</sup> This Court has ruled that these requirements, which are memorialized in Superior Court Criminal Rule 32.1, satisfy the constitutional requirements of due process.<sup>5</sup> Moreover, the Superior Court has broad discretion when deciding whether to revoke

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<sup>3</sup> *Perry v. State*, 741 A.2d 359, 362-63 (Del. 1999) (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 789-90 (1973)).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

probation.<sup>6</sup> The Superior Court needs only “some competent evidence” supporting a conclusion that “the conduct of the probationer has not been as good as required by the conditions of probation” in order to revoke probation.<sup>7</sup>

(7) The transcript of Coates’ VOP hearing discloses that the Superior Court had more than “some competent evidence” to support its finding of a VOP. The transcript does not show that Coates was deprived of any due process protections afforded him by Rule 32.1. Although Coates was represented by counsel, there was little that counsel could do for his client, because the evidence supporting the VOP was overwhelming. Coates’ underlying complaint that Delaware procedures differ from those in Pennsylvania has no relevance to his appeal. Taking all the above into consideration, we conclude that Coates’ conclusory claims of due process violations at his VOP hearing are without merit.

(8) Coates also claims that the judge who presided over the VOP hearing was biased against him and sentenced him with a closed mind. A judge sentences a defendant with a closed mind where the sentence is based upon a preconceived bias rather than a consideration of the nature of the

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<sup>6</sup> *Kurzmann v. State*, 903 A.2d 702, 716 (Del. 2006).

<sup>7</sup> *Id.*

offense and the character of the defendant.<sup>8</sup> The transcript of the VOP hearing does not reflect any bias on the part of the presiding judge. The judge listened to the testimony and the arguments of both sides before imposing sentence. It is clear from the transcript that the judge did not believe Coates' explanations for failing to provide Probation and Parole with his current address. But that, in and of itself, does not indicate that the judge was biased against Coates. We conclude that this claim, too, is without merit.

(9) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, 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/ Jack B. Jacobs  
Justice

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<sup>8</sup> *Weston v. State*, 832 A.2d 742, 746 (Del. 2003).