

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAMAR M. SIMMONS,)
) No. 72, 2000
 Defendant-Below,)
 Appellant,) Court Below: Superior Court
 v.) of the State of Delaware in
) and for New Castle County
)
 STATE OF DELAWARE,) Cr. No. VN98-07-0672-01
)
 Plaintiff-Below,)
 Appellee.)

Submitted: November 14, 2000

Decided: February 2, 2001

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

ORDER

This 2nd day of February 2001, it appears to the Court that:

1. Lamar M. Simmons appeals the Superior Court's decision to discharge him from a boot camp diversion program and to sentence him to three years at Level V after finding him in violation of the boot camp diversion program rules. Simmons argues that the Superior Court abused its discretion by relying only on hearsay evidence to discharge him from the boot camp program and thus violated his due process rights¹. Because we find that the Superior Court abused its discretion by finding that Simmons violated the boot camp diversion rules

¹ *Brown v. State*, Del. Supr., 249 A.2d 269 (1968).

solely upon hearsay testimony without any competent or reliable evidence to support that finding, we REVERSE and REMAND for further action in accordance with this order.

2. Simmons pled guilty to trafficking in cocaine on August 31, 1998. His plea agreement called for him to enter a boot camp diversion program. A multidisciplinary team (“MDT”) later administratively discharged him after finding that he had unauthorized communications with female inmates, had unauthorized possession of food, and had been in a bathroom during a time that the bathroom was considered “off limits.” After a hearing in the Superior Court in which Simmons and Hansel Fuller, boot camp counselor, testified, the Superior Court discharged Simmons from the boot camp diversion program and sentenced him to three years at Level V.

3. This Court reviews the Superior Court’s decision to terminate the defendant from the boot camp diversion program for abuse of discretion.² Claims of constitutional violations are reviewed *de novo*.³

4. Simmons argues that the Superior Court abused its discretion by relying solely on hearsay evidence to discharge him from the boot camp diversion program, and by so doing violated his due process rights. To support his argument,

² *Id.* at 271.

³ *Williamson v. State*, Del. Supr., 707 a.2d 350, 354 (1998).

Simmons points out that the only evidence the State presented to the Superior Court was the testimony of Fuller, the boot camp counselor. Fuller testified at the Superior Court hearing, over an objection by Simmons' counsel, about specific incidents of misconduct that lead to Simmons' discharge. Fuller conceded, however, that he had no first-hand knowledge of any of the incidents. In addition, Simmons contends that the State produced no record of the alleged violations presented to the MDT or the procedural protections provided Simmons by the MDT.

5. In *Brown v. State*,⁴ this Court found that it was an abuse of discretion for the Superior Court to revoke a term of probation and impose a prison sentence based solely on hearsay evidence, holding that “a probation revocation may not stand unless there be some competent evidence to prove the violation asserted,”⁵ citing, however, several cases finding no abuse of discretion in relying on hearsay evidence when there is other competent evidence to supplement the hearsay evidence and sustain the revocation.⁶

6. In this case, the Superior Court found that Simmons violated the boot camp diversion program rules after being cited for a violation of probation. Nevertheless, because Simmons is entitled to a hearing under 11 *Del. C.* § 6712(h),

⁴ Del. Supr., 249 A.2d 269, 272 (1968).

⁵ *Id.* at 272.

⁶ *Id.*

it follows that it is an abuse of discretion for the Superior Court to rely solely on hearsay evidence to discharge him from the boot camp diversion program. The State presented a witness who had no first-hand knowledge of the events constituting the violations. The State presented no other evidence to supplement the hearsay, and Simmons denied he committed the acts constituting the violations.⁷ The adverse consequences to Simmons are obvious – the Court sentenced him to three years at Level V as a direct result of the violation of the boot camp diversion rules.

NOW, THEREFORE, IT IS ORDERED, this matter is REVERSED and REMANDED to the Superior Court for a new hearing consistent with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Myron T. Steele
Justice

⁷ See *Liles v. State*, 620 A.2d 858 (1992) (finding that the defendant's own admissions during the probation revocation hearing corroborated the counselor's statements).