

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDWARD N. MANN,	)	
	)	
Defendant Below,	)	No. 190, 2000
Appellant,	)	
	)	Court Below: Superior Court
v.	)	of the State of Delaware in
	)	and for Sussex County
STATE OF DELAWARE,	)	
	)	Cr. A. No. 93-09-0578
Plaintiff Below,	)	Cr. ID No. 93S04867DI
Appellee.	)	

Submitted: December 12, 2000

Decided: March 7, 2001

Before **WALSH, HOLLAND** and **STEELE**, Justices.

***ORDER***

This 7<sup>th</sup> day of March, 2001, it appears to the Court that:

1. Edward Mann appeals the Superior Court's judgment that he had violated his probation. That Court sentenced him to time at Level V. Mann argues that the trial court abused its discretion because the trial judge improperly considered the events surrounding a rape charge on which a jury had found him not guilty. Mann argues that the doctrine of collateral estoppel precluded the trial judge from considering these events because a jury had acquitted him of that crime. Mann also contends that the trial judge's comments at the violation of probation hearing demonstrated that he was neither "neutral" nor "detached." Mann's arguments ignore the fact that the trial judge also found that Mann had

violated his probation because he had failed to appear at two scheduled office visits with his probation officer, he had tested positive for cocaine and he had admitted to using cocaine on the night of the alleged rape. We find no merit to Mann's claims of error and find that the record establishes Mann's clear violations of his probation. Therefore, we AFFIRM.

2. On October 30, 1999, police charged Mann with first degree rape, second degree burglary, third degree assault and two counts of endangering the welfare of a child. On November 19, 1999, Mann's probation officer filed a violation of probation report alleging that Mann failed to report for two scheduled office visits<sup>1</sup> and that Mann tested positive for cocaine in July and August 1999.<sup>2</sup> Because Mann faced new charges at that time, a violation of probation hearing was scheduled for a time after the disposition of the new charges.

3. On March 1, 2000, a jury found Mann not guilty of first degree rape, second degree burglary and third degree assault. The endangering charges had been previously dismissed. Approximately two days later, Mann appeared in the Superior Court for the violation of probation charges before the very same trial judge who had presided over Mann's rape trial. During the violation of probation

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<sup>1</sup> These office visits were scheduled for September 21, 1999 and October 5, 1999.

<sup>2</sup> Mann's probation contained nine conditions. Condition #3 stated: "You must report to your Supervising Officer at such times and places as directed, and permit the Probation/Parole Officer to enter your home and/or visit places of employment." Condition #7 stated: "You are not to possess or consume a controlled substance or other dangerous drugs unless prescribed lawfully. You are subject to random testing as directed by your Supervising Officer."

hearing, the trial judge referred to the rape charges, stating “I don’t buy into the grounds that he went to the lady who he was breaking up with at 4:30 in the morning for the purposes of her desire to make love one more time before they broke up.”<sup>3</sup> Mann then requested a continuance to present an argument that it would be improper to adopt findings of fact contradicted by a jury’s evident finding at a trial to support a conclusion that a defendant violated his probation.

4. When the violation of probation hearing continued, the trial judge rejected Mann’s argument that collateral estoppel precluded him from considering the events surrounding the rape charge. When finding that Mann violated his probation, the trial judge considered all of Mann’s conditions of probation, the events surrounding the rape charge and Mann’s admission that he used cocaine on the night of the alleged rape. The trial judge sentenced him to four years at Level V, suspended after two years for Level IV, suspended after nine months for Level III.

5. In the present matter, this Court reviews the trial court’s judgment to revoke probation for an abuse of discretion.<sup>4</sup> Mann argues that the trial court abused its discretion when it revoked his probation because the trial judge improperly considered the events surrounding the rape charge. Mann argues that

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<sup>3</sup> App. To Appellant’s Op. Br. at A-9.

<sup>4</sup> See *Stewart v. State*, Del. Supr., No. 144, 1997 Hartnett, J. (Sep. 17, 1997) (ORDER); *Brown v. State*, Del. Supr., 249 A.2d 269, 271 (1968).

the doctrine of collateral estoppel precluded the trial judge from considering the events surrounding the rape charge because a jury found him not guilty of that crime. Mann urges us to conclude that the jury's finding of not guilty is an inescapable conclusion that the facts alleged by the State never occurred.

6. The burden of proof to sustain a finding of a violation of probation is preponderance of the evidence.<sup>5</sup> The burden of proof to sustain a guilty verdict for rape is beyond a reasonable doubt. Mann incorrectly argues that a finding of not guilty equates to a conclusion that he did not commit all of the acts that the State argued constituted rape. To the contrary, an acquittal merely means that the State failed to convince a jury empanelled for his trial that Mann committed rape beyond a reasonable doubt.<sup>6</sup> Because the burden of proof at a violation of probation hearing is different than the burden of proof at a trial for rape, the trial judge correctly found that collateral estoppel did not preclude him from considering the facts surrounding the alleged rape.<sup>7</sup>

7. Mann argues that at his violation of probation hearing, the trial judge's comments demonstrated that he was neither "neutral" nor "detached." In other words, Mann argues that the trial judge lacked objectivity. Because Mann

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<sup>5</sup> See *Cooper v. State*, Del. Supr., No. 119, 1999, Veasey, C.J. (Dec. 8, 1999) (ORDER) (citing *Brown v. State*, Del. Supr., 249 A.2d 269 (1968)).

<sup>6</sup> See, e.g., *Gibson v. State*, Md. Ct. App., 616 A.2d 877, 881 (1992).

<sup>7</sup> See *Gibbs v. State*, Del. Supr., 760 A.2d 541, 544 (2000); *Standlee v. Rhay*, 9<sup>th</sup> Cir., 557 F.2d 1303 (1977). In fact the State notes that only two jurisdictions, Pennsylvania and Illinois, follow

did not request that the trial judge recuse himself from presiding over the violation of probation hearing, we review this issue for plain error.<sup>8</sup>

8. Mann presents no more than the trial judge's comments at the hearing to suggest that the trial judge lacked objectivity. There is no evidence in the record to raise any reasonable question about the impartiality of the judge who presided over the violation of probation hearing. The trial judge knew Mann admitted to using cocaine while on probation because Mann admitted to using cocaine on the night of the alleged rape during his rape trial. The trial judge's comments, no matter how colorful, simply reflected his knowledge of Mann's actions as he heard them as he presided over a trial in his courtroom. There is no evidence of bias or prejudice from an extrajudicial source that would have required recusal or disqualification.<sup>9</sup>

9. Mann fails to show either that the trial judge abused his discretion in reaching his findings at the violation of probation hearing or that the trial judge's comments at the violation of probation hearing demonstrated that he lacked objectivity when he considered Mann's actions.

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the rule that an acquittal in a criminal trial collaterally estops the revocation of probation on the same offense.

<sup>8</sup> See Supr. Ct. R. 8.

<sup>9</sup> See *Stevenson v. State*, Del. Supr., 709 A.2d 619, 635 (1998); *Weber v. State*, Del. Supr., 547 A.2d 948, 951-52 (1988).

10. Mann's arguments above overlook the fact that the trial judge found that Mann had violated his probation because he missed two scheduled office visits with his probation officer, he had tested positive for cocaine while on probation and admitted to using cocaine on the night of the alleged rape. These facts alone constituted sufficient grounds to revoke Mann's probation. Further, the sentence actually imposed would have been well within the discretion of the Court even if the Court's conclusion had been based upon these three grounds alone.

NOW, THEREFORE, IT IS ORDERED, the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

Myron T. Steele  
Justice