

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN C. MAYHEW,	§
	§
Defendant Below,	§
Appellant,	§ No. 82, 2001
	§
v.	§ Court Below: Superior Court
	§ of the State of Delaware in and
STATE OF DELAWARE,	§ for New Castle County
	§ Cr. A. No. 98-11-007926
Plaintiff Below,	§
Appellee.	§

Submitted: September 26, 2001

Decided: September 27, 2001

Before WALSH, HOLLAND, and STEELE, Justices.

ORDER

This 27th day of September 2001, upon consideration of the briefs of the parties, it appears to the Court that:

(1) The appellant, John C. Mayhew (“Mayhew”), appeals from a Superior Court determination that he had violated the conditions of his probation. Mayhew argues that since, technically, at least, his probation had not yet formally begun the court had no legal basis for finding a violation. He also complains that the basis for the violation was presented through hearsay testimony by his Probation Officer. We find no merit in either contention.

(2) It is clear from the record that Mayhew's delayed entry into formal probation was attributable to his failure to report for enrollment in the reentry program following his release from prison. The revocation of Mayhew's probation thus may have been more appropriately termed "resentencing in light of changed circumstances." *Kowalski v. State*, Del. Supr., No. 366, 1989, Moore J. (Nov. 30, 1989) (ORDER). In either event, the Superior Court had authority to change Mayhew's probation status if he failed to comply with the condition of any terms imposed by the court at the time of his sentencing. In view of his failure to report to the Plummer Center or his Probation Officer and his arrest on new charges, it is obvious that Mayhew was not in compliance with the conditions of his release from incarceration to probationary status.

(3) With respect to Mayhew's claim that the evidence at his probationary hearing was based on hearsay, we note that no such claim was made before the Superior Court and will not be considered on review in the absence of plain error. We find no basis for the application of the plain error standard in this case since the Probation Officer's report was based, in part, on direct knowledge. In any event, any error did not undermine the substantial rights of the defendant or affect the

integrity or fairness of his trial. *Wainwright v. State*, Del. Supr., 504 A.2d 1096, *cert. denied*, 479 U.S. 869 (1986).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is,

AFFIRMED.

BY THE COURT:

s/Joseph T. Walsh
Justice