

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JERMAINE HALL,	§	
	§	No. 314, 2001
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County in Cr.
	§	A. No. VS99-12-0648-01.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9912011776

Submitted: October 19, 2001

Decided: October 31, 2001

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

ORDER

This 31st day of October 2001, 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) In January 2000, Jermaine Hall pled guilty to the charge of Maintaining a Dwelling for Keeping Controlled Substances. By modified sentencing order issued on March 4, 2000, Hall was sentenced to three years at Level V, suspended for three years at Level III.

(2) On May 30, 2001, the Superior Court issued a notice directing Hall to appear for a violation of probation (“VOP”) hearing on June 8, 2001. The Superior Court’s notice provided Hall with a copy of the VOP report and advised Hall that he should contact an attorney if he desired to be represented by counsel at the hearing.

(3) Hall appeared *pro se* at the June 8 hearing. He was adjudged guilty of VOP and was sentenced to three years at Level V, suspended after completion of the Key and Crest Programs. This appeal followed.

(4) On appeal, Hall alleges that his due process rights were violated at the VOP hearing when: (i) he was not provided with the appointment of counsel; (ii) he was prevented from speaking at the VOP hearing prior to the imposition of sentence; and (iii) he was sentenced without his probation officer being present. Hall did not raise these issues at his VOP hearing. Accordingly, we review the claims for plain error.¹

(5) Hall contends that he was entitled to appointed counsel at the VOP hearing. Hall’s claim is without merit. There is no right to the appointment of counsel at a VOP hearing.² A request for the appointment of

¹Supr. Ct. R. 8; *Wainwright v. State*, Del. Supr., 504 A.2d 1096, 1100 (1986).

²*Jones v. State*, Del. Supr., 560 A.2d 1056, 1057 (1989).

counsel is generally addressed to the discretion of the trial court.³ The VOP proceeding in this case did not present any substantial or complex issues that would have entitled Hall to the appointment of counsel.⁴ The Superior Court was not obligated to appoint counsel to represent Hall.

(6) Hall complains that he was prevented from speaking before the imposition of sentence. Hall's claim is belied by the record. It appears from the hearing transcript that Hall was given ample opportunity to speak at the VOP hearing.⁵

(7) Hall alleges that he was sentenced without his probation officer being present. It appears from the record that a probation officer was present at, and participated in, the VOP hearing. Hall was convicted on the basis of his probation officer's report and Hall's own admissions,⁶ which corroborated much of the report and provided an adequate basis for finding Hall guilty of VOP. The evidence in a VOP hearing need only be "such as to reasonably

³*Id.*

⁴*Id.*

⁵*See* VOP Hr'g Tr., June 8, 2001.

⁶The report charged, and Hall admitted, that he had absconded from probation and tested positive for drugs.

satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation.”⁷

(8) In this case, it is manifest on the face of Hall’s opening brief that the appeal is without merit. The issues raised are clearly controlled by settled Delaware law, and to the extent the issues on appeal implicate the exercise of judicial discretion, 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/ Myron T. Steele
Justice

⁷*Brown v. State*, Del. Supr., 249 A.2d 269, 272 (1968) (quoting *Manning v. United States*, 5th Cir., 161 F.2d 827, 829 (1947)).