

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES D. MOODY,	§	
	§	No. 526, 2001
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County in
	§	Cr.A. Nos. VS00-12-0111 &
STATE OF DELAWARE,	§	0112.
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9911018671

Submitted: January 31, 2002

Decided: March 22, 2002

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

**ORDER**

This 22<sup>nd</sup> day of March 2002, 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 appellant, James D. Moody, has filed this appeal from his conviction and sentence on a charge of violation of probation (VOP). The appellee, State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Moody’s opening brief that the appeal is without merit.

(2) In March 2000, Moody pled guilty to Unlawful Imprisonment in the Second Degree and Assault in the Third Degree. The Superior Court sentenced Moody to two years at Level V imprisonment, suspended for one year at Level II probation.

(3) On September 14, 2001, Moody was charged with VOP. A VOP hearing was scheduled for the following week. Moody was advised to contact his attorney if he intended on having legal representation at the hearing.

(4) Moody appeared *pro se* at the September 21 VOP hearing. At the conclusion of the hearing, the Superior Court adjudged Moody guilty of VOP and sentenced him to two years at Level V imprisonment, suspended upon completion of the Short-Term Key Program, followed by nine months at the Level IV Crest Residential Substance Abuse Treatment Program, suspended upon completion of the Program, for six months at Level III Crest Aftercare.

(5) In his opening brief on appeal, Moody complains that he was not represented by counsel at the VOP hearing. Moreover, Moody contends that he was “never offered the opportunity to contest [the] VOP,” and that he was not supplied with a copy of a toxicologist’s report.

(6) There is no absolute right to the appointment of counsel in a VOP proceeding.<sup>1</sup> In this case, Moody readily admitted at the VOP hearing that he had violated the conditions of his probation. Moody's reason in mitigation of the violation, *i.e.*, that his father recently had passed away, was not complex or otherwise difficult to develop or present. Under these circumstances, the Superior Court was not obligated to appoint counsel to represent Moody.<sup>2</sup>

(7) Moody was charged with violating two conditions of his probation: (i) having failed to report for probation appointments and (ii) having failed to report changes in his residence and employment to his probation officer. When the Superior Court asked Moody at the VOP hearing whether he had violated these conditions of his probation, Moody admitted that he had. Moody could have contested the charges at the VOP hearing, but he did not. Moody's claim that he was "never offered the opportunity to contest [the] VOP" is without merit.

(8) Moody complains that he did not receive a copy of a toxicology report showing that he had ingested illegal drugs in violation of his probation conditions. Moody did not, however, raise this claim in the Superior Court, and he conceded at the VOP hearing that he had admitted to his probation officer that he had used drugs

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<sup>1</sup>*Jones v. State*, 560 A.2d 1056 (Del. 1989).

<sup>2</sup>*See Id.* at 1058 (quoting *Gagnon v. Scarpelli*, 411 U.S. 778, 790 (1973)).

while on probation. The evidence in a VOP hearing need only be “such as to reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the terms and conditions of probation.”<sup>3</sup> In view of Moody’s admissions at the VOP hearing, presentation of the toxicology report was unnecessary.

(9) It is manifest on the face of Moody’s opening brief that this 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

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<sup>3</sup>*Brown v. State*, 249 A.2d 269, 272 (Del. 1968) (quoting *Manning v. United States*, 161 F.2d 827, 829 (5<sup>th</sup> Cir. 1947)).

