

IN THE SUPREME COURT OF THE STATE OF DELAWARE

REGGIE D. WHITE,)
) No. 359, 2003
 Defendant Below,) Court Below: Superior Court
 Appellant,) of the State of Delaware in
) and for Sussex County
 v.)
) Cr. ID. No. 0109002649
 STATE OF DELAWARE,)
)
 Plaintiff Below,)
 Appellee.)

Submitted: January 21, 2004
Decided: March 12, 2004

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

ORDER

This 12th day of March 2004, upon consideration of the briefs of the parties, it appears to the Court as follows:

1. A Superior Court judge found that Reginal D. White violated the conditions of his probation. White now appeals alleging that the State did not produce evidence sufficient to establish that he violated his probation or broke a “last chance” contract. Because the record contains evidence to support a finding that White did not comply with the rules of the Crest Program, a condition of his probation, we affirm.

2. On April 3, 2002, White pled guilty to one count of delivery of cocaine. He was sentenced to six years at Level V, suspended for 12 months at

Level III conditioned upon successful completion of the “Crest Program” (a Level IV residential substance abuse rehabilitation program). White began the Crest Program on April 17, 2002, but was discharged soon thereafter, on May 7, 2002, before completing the program. The reasons cited for White’s discharge included: (a) his poor attitude; (b) his noncompliance with the treatment program; and, (c) his threats of physical violence upon others.

3. On May 24, 2002, White was re-sentenced to six years at Level V, suspended for 1 year at Level IV Residential Substance Abuse Treatment Program conditioned upon completion of a Level V Key Program for one year. Thereafter, the balance of the sentence was suspended for Level III aftercare. This Court affirmed the re-sentencing on appeal.¹

4. White successfully moved to set aside the earlier VOP and Superior Court held another VOP hearing on June 6, 2003. Claudette Pettyjohn, a counselor in the Crest Program, and Helen Moore, a counselor with the Department of Corrections, testified at the VOP hearing. In addition to the testimony of Pettyjohn and Moore, the State presented documentary evidence of White’s violations. White testified at the VOP hearing that he did not want to leave the Crest Program.

¹ *White v. State*, Del. Supr. No. 333, 2002, Veasey C.J. (September 24, 2002).

Further, he insisted that he complied with all of the program's rules after he signed a "last-chance" contract.²

5. The trial judge found that White violated the terms of his probation by not adhering to the rules of the Crest Program. On appeal, White argues that there was insufficient evidence to support a finding of violation of probation. Further, White contends that the "last-chance" contract nullifies all previous violations and that there was insufficient evidence to find that he was in violation of his probation *after* signing the contract.

6. At VOP hearings, a trial judge's discretion is broad and the standard of review is limited to an abuse of discretion.³ To establish a probation violation, "all that is required is that the evidence and facts be such as to reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation."⁴ Moreover, although hearsay may not be exclusively relied upon to sustain a violation of probation, it is admissible in a probation hearing.⁵

7. Although White testified that he complied with all of the rules of the Crest Program after signing the "last chance" contract and did not express a desire to leave the program, the trial judge found Pettyjohn and Moore more credible.

² The "Last-chance contract" included a prohibition against exhibiting any negative behavior.

³ *Brown v. State*, 249 A.2d 269, 272 (Del. 1968).

⁴ *Id.* at 272.

⁵ *Id.*

The trial judge correctly concluded that the “last-chance” contract was not a legal contract but rather a tool used by the Crest Program to inform participants of their final opportunity to cure behavioral deficiencies in order to avoid being discharged from the program. Accordingly, all delinquencies, including misconduct before signing the “last-chance” contract, may be considered in evaluating whether a respondent violated his probation.

8. Sufficient competent evidence exists in the record to support the finding that White violated the terms of his probation by not complying with the rules of the Crest Program. The State presented the following evidence at the VOP hearing: (a) A progress report dated April 21, 2002 documenting White’s defensive demeanor and lack of cooperation; (b) Pettyjohn’s testimony that she received several complaints by White’s peers about his poor attitude and his refusal to follow directions; (c) two incident reports documenting White’s negative behavior;⁶ (d) testimony about White’s negative attitude reflected in his own written responses to a questionnaire entitled Ten Habits for Serenity and Success; (e) a progress note dated May 5, 2002 discussing White’s poor attitude and anti-social behavior in group seminars; (f) testimony by Pettyjohn that she had received reports about White threatening physical violence against another inmate; (g)

⁶ The first incident report references White’s hostile vocal reaction and “negative look” after being confronted about having his pants pulled down and shirt out at meal time; the second incident report references his intimidating and threatening reaction after being told to return his bunk.

testimony by Moore that White was generally defiant; and, (h) testimony by Pettyjohn that White expressed a desire to leave the program and continued to display a negative attitude even after signing a “last-chance” contract.⁷ These facts support the trial judge’s finding. The trial judge did not abuse his discretion by finding White in violation of the conditions of his probation.

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

/s/ Myron T. Steele
Justice

⁷ The “last-chance” contract included a prohibition against exhibiting any negative behavior.