

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PATRICK JAMES SPARKS,	§	
	§	
Defendant Below,	§	No. 39, 2000
Appellant,	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware, in
STATE OF DELAWARE,	§	and for Sussex County in
	§	Cr.A.No. S96-10-0270
Plaintiff Below,	§	
Appellee.	§	
	§	Def. ID No. 9609012052

Submitted: April 4, 2000
Decided: May 16, 2000

Before **HOLLAND, HARTNETT** and **BERGER**, Justices.

ORDER

This 16th day of May 2000, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a),¹ it appears to the Court that:

(1) In February 1997, the appellant, Patrick James Sparks (“Sparks”), pleaded guilty in the Superior Court to Possession with Intent to Deliver Cocaine. Sparks was sentenced to five years at Level V, with

¹On April 10, 2000, Sparks filed a response to the appellee’s motion to affirm. A response, however, is not permitted to a motion to affirm unless requested by the Court. Supr. Ct. R. 25(a). Accordingly, the Court did not consider Sparks’ response.

credit for time served, suspended for nine months at Level IV Home Confinement, followed by six months at Level III, followed by three years and nine months at Level II.

(2) On June 13, 1997, Sparks was found guilty of violation of probation (“VOP”) and was sentenced. On December 11, 1998, Sparks was again found guilty of VOP and was sentenced. On January 14, 2000, Sparks was convicted, for the third time, of VOP and was sentenced. This appeal followed.

(3) On appeal, Sparks claims that his constitutional rights were violated because he did not have legal representation at the January 14 VOP hearing. Sparks argues that, because he was not provided with counsel at the hearing, he was deprived of his constitutional right to due process. Sparks contends that, as a result of these deprivations of his constitutional rights, the VOP conviction should be reversed.

(4) It appears from the record that Sparks’ probation officer testified at the January 14 VOP hearing that Sparks tested positive for PCP and marijuana on December 16, 1998. Moreover, the probation officer testified that, after Sparks walked away from a Department of Correction highway crew on December 21, 1998, Sparks was charged with Escape

after Conviction. The probation officer testified that Sparks' whereabouts remained unknown until November 25, 1999, when Sparks was arrested and charged with Possession of Marijuana and Drug Paraphernalia in Ocean City, Maryland. The probation officer testified that the new charges, i.e., those of Escape after Conviction on December 21, 1998,² Possession of Marijuana and Possession of Drug Paraphernalia on November 25, 1999,³ and the positive drug test on December 16, 1998, formed the basis of the VOP report that was filed against Sparks in this case.

(5) After the probation officer testified, the Superior Court judge asked Sparks if the substance of the probation officer's testimony was true. Sparks indicated that it was. When the Superior Court asked Sparks if there was anything Sparks wanted to say, Sparks acknowledged that he expected to be convicted of VOP. Sparks requested that the Superior Court sentence him to Level IV Home Confinement so that he could live with, and take care of, his elderly grandmother and also provide for his

²It appears from the Superior Court docket that, on April 4, 2000, Sparks pleaded guilty to Escape in the Second Degree and was sentenced. *State v. Sparks*, Del. Super., Cr. A. No. PS00-01-0106I, Stokes, J. (April 4, 2000) (ORDER).

³The probation officer testified that, on December 28, 1999, Sparks pleaded guilty to Possession of Marijuana and Drug Paraphernalia in District Court in Maryland,

daughter. Notwithstanding Sparks' request, the Superior Court judge noted that Sparks had two prior VOP convictions and indicated that he would follow the probation officer's sentencing recommendation. The Superior Court then sentenced Sparks to five years at Level V, with credit for time served, suspended upon successful completion of Boot Camp, for twelve months at Level IV Crest South, suspended upon successful completion, for six months at Level III Aftercare.

(6) A probationer is entitled to certain minimum requirements of due process.⁴ There is, however, no absolute right to assistance of counsel at a violation of probation hearing.⁵ Rather, an indigent probationer is entitled to assistance of counsel only when: (i) the probationer raises a timely and colorable claim that he or she has not committed the alleged violation; or (ii) there are substantial and complex reasons which justified or mitigated the violation and which make revocation inappropriate.⁶

(7) Sparks' claim, that he was entitled to counsel at the January 14 VOP hearing, is not persuasive. By letter dated December 29, 1999, the

Worcester County, and was sentenced to time served. VOP Hearing Tr. at 3 (Jan. 14, 2000).

⁴See *Gagnon v. Scarpelli*, 411 U.S. 778, 786 (1973). See also Del. Super. Ct. Crim. R. 32.1.

⁵*Jones v. State*, Del. Supr., 560 A.2d 1056, 1057 (1989).

Superior Court informed Sparks of the upcoming January 14 VOP hearing and advised him to contact counsel immediately if he desired legal representation. Sparks chose not to retain counsel and did not object to proceeding without counsel at the VOP hearing. Moreover, at the January 14 hearing, Sparks admitted to having violated probation. The reasons offered by Sparks for leniency in sentencing were neither substantial nor complex. Under these circumstances, the Superior Court was not obligated to appoint counsel to represent Sparks.

(8) It is manifest on the face of Sparks' opening brief that the appeal is without merit. The issues presented in this appeal are clearly controlled by settled Delaware law, and 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/Maurice A. Hartnett, III

Justice

⁶*Sheppard v. State*, Del. Supr., No. 250, 1990, Holland, J., 1991 WL 78469 (April 30, 1991) (ORDER) citing *Jones v. State*, Del. Supr., 560 A.2d, 1056, 1058 (1989).