

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTOINE JENKINS, )  
 ) No. 133, 2004  
 Defendant Below, )  
 Appellant, ) Court Below: Superior Court  
 v. ) of the State of Delaware in  
 ) and for New Castle County  
 )  
 STATE OF DELAWARE, ) Cr. ID No. 0305001500  
 ) Cr. A. Nos. IN03-05-0533  
 Plaintiff Below, ) and PN03-05-1787  
 Appellee. )

Submitted: September 15, 2004  
Decided: November 23, 2004

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

***ORDER***

This 23<sup>rd</sup> day of November 2004, on consideration of the briefs of the parties, it appears to the Court that:

1. Antoine Jenkins appeals a Superior Court judge's revocation of his probation, claiming that his Sixth Amendment right to confront adverse witnesses was violated at the time of the revocation hearing and that the State failed to present sufficient evidence to support revocation. Because we find that a violation of probation hearing is neither a criminal prosecution nor a formal trial, we conclude that the Sixth Amendment does not apply. Furthermore, because the State presented evidence that Jenkins had confessed to selling drugs, and that he had drugs in his possession when arrested, we hold that the State proved by a

preponderance of the evidence that a violation of probation occurred. Accordingly, we AFFIRM.

2. In July 2003, Jenkins pleaded guilty to first degree reckless endangering and carrying a concealed deadly weapon. A Superior Court judge sentenced Jenkins to two years at Level V for each count, to be suspended after sixty days. The judge also placed Jenkins at Level IV home confinement. The following month, on information that Jenkins had disobeyed the terms of his house arrest, a probation officer filed a violation report. Shortly thereafter, a warrant issued for Jenkins' arrest.

3. On October 29, 2003, before any hearing and before Jenkins' arrest on the August warrant, three police detectives stopped Jenkins' car and arrested him after observing a suspicious transaction between Jenkins and the driver of a pickup truck. Howard Joiner drove the pickup. During the stop, detectives found cocaine in Jenkins' car and heroin on his person.<sup>1</sup> After receiving *Miranda* warnings, Jenkins gave a videotaped confession and admitted selling drugs to Joiner. In addition, Joiner admitted buying drugs from Jenkins.

4. At a fast-track VOP hearing, Andrea Janvier, a Wilmington City detective, testified to the transaction that police had observed between Jenkins and

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<sup>1</sup> Detective Janvier testified at the VOP hearing that the powder substance seen in the car field-tested positive for cocaine, and the substance in the bags clenched in Jenkins' fist field- tested positive for heroin.

Joiner, as well as about the drugs found when they stopped Jenkins' car. Janvier also testified to the confessions that both Jenkins and Joiner had made after their arrest. Defense counsel objected to Janvier's testimony about Joiner's statement on the basis that it constituted inadmissible hearsay that violated the Sixth Amendment's Confrontation Clause.<sup>2</sup> The Superior Court judge overruled the objection, admitted the testimony, and found that Jenkins had violated his probation. The judge revoked the probation previously imposed for the reckless endangering and CCDW charges, and reinstated the original sentences.

5. On appeal, Jenkins challenges the admissibility of Janvier's testimony about Joiner's statement, contending that the judge denied him his right to confront an adverse witness in violation of the Sixth Amendment. The standard of review for Jenkins' Sixth Amendment claim is *de novo*.<sup>3</sup> Our review regarding the admissibility and the sufficiency of the evidence is for abuse of discretion.<sup>4</sup>

6. Jenkins argues that Janvier's testimony about Joiner's confession, without Joiner's presence at the hearing, violated Jenkins' state and federal constitutional rights to confront an adverse witness. He insists that the Sixth Amendment, as interpreted by the United States Supreme Court in *Crawford v.*

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<sup>2</sup> U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him. . . .").

<sup>3</sup> *Forrest v. State*, 721 A.2d 1271, 1277 (Del. 1997).

<sup>4</sup> *Lilly v. State*, 649 A.2d 1055, 1059 (Del. 1994); *Brown v. State*, 249 A.2d 269, 272 (Del. 1968).

*Washington*,<sup>5</sup> should apply to his VOP hearing and would preclude testimony from Janvier about Joiner's statement. He contends that Janvier's testimony about Joiner's confession is inadmissible hearsay.<sup>6</sup>

7. Contrary to Jenkins' assertions, the United States Supreme Court has held that the Fourteenth Amendment is the constitutional provision that protects a probationer's constitutional rights at a VOP hearing.<sup>7</sup> A VOP hearing is neither a criminal prosecution nor a formal trial and only minimal requirements of due process must be observed.<sup>8</sup> Consistent with that requirement, the Superior Court Criminal Rules provide that a probationer shall be given written notice of the violation, disclosure of the evidence, an opportunity to appear and present evidence, the opportunity to question adverse witnesses, and notice of the probationer's right to counsel.<sup>9</sup> Consequently, the issue we must determine is whether a probationer is entitled to the full panoply of Sixth Amendment

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<sup>5</sup> 124 S.Ct. 1354 (2004).

<sup>6</sup> Under the confrontation clause, a "testimonial" out-of-court statement is only admissible if the declarant is available to testify. *Crawford*, 124 S.Ct. at 1364-65. According to *Crawford*, "[s]tatements taken by police officers in the course of interrogations are also testimonial." *Id.* at 1364.

<sup>7</sup> *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973), citing *Morrisey v. Brewer*, 408 U.S. 471 (1972).

<sup>8</sup> Under Delaware law, a VOP hearing, conducted in accordance with 11 *Del. C.* § 4334, may be informal or summary, but minimal requirements of due process must be observed. *Perry v. State*, 741 A.2d 359, 362-63 (Del. 1999), citing *Gagnon* 411 U.S. at 789-90.

<sup>9</sup> SUPER. CT. CRIM. R. 32.1.

protections during a VOP hearing or only to the more limited rights afforded under the Due Process Clause of the Fourteenth Amendment.

8. The Sixth Amendment, and the correlative rights contained in Article I, Section 7 of the Delaware Constitution, govern the rights of an accused in a criminal prosecution.<sup>10</sup> Those rights include the right to assistance of counsel and the right to confront adverse witnesses.

9. By contrast, the Fourteenth Amendment has been held to govern the less formal process of a VOP hearing.<sup>11</sup> The rules of evidence do not apply in a VOP hearing and a probationer is not entitled to the complete panoply of constitutional rights afforded a defendant during a criminal trial.<sup>12</sup> Specifically, the United States Supreme Court's decision in *Gagnon v. Scarpelli* rejected the argument that a probationer or parolee has a Sixth Amendment right to counsel during a VOP hearing.<sup>13</sup> The right to counsel during a VOP hearing stems instead from the Due

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<sup>10</sup> U.S. CONST. Amend. VI (“In all *criminal prosecutions*, the accused shall enjoy the right to a speedy and public trial. . . .”) (emphasis added); Del. CONST. art. I § 7 (“In all *criminal prosecutions*, the accused hath a right to be heard by himself and his counsel. . . .”) (emphasis added).

<sup>11</sup> The United States Supreme Court has repeatedly held that “probation revocation . . . is not a stage of a criminal prosecution.” *Gagnon*, 411 U.S. at 782; *Morrissey*, 408 U.S. at 480. In addition, this Court has held that the structure of a VOP hearing is subject to an exercise of broad discretionary power. *Williams v. State*, 560 A.2d 1012, 1015 (Del. 1989); *Brown v. State*, 249 A.2d 269, 271 (Del. 1968).

<sup>12</sup> *Brewington v. State*, 797 A.2d 1206 (Del. 2002) (TABLE); *Brown*, 249 A.2d at 272.

<sup>13</sup> 411 U.S. at 778.

Process Clause and must only be afforded in cases where arguments are complex or otherwise difficult to develop or to present.<sup>14</sup> This case-by-case determination is left to the “sound discretion” of the state authority that governs the probation system.<sup>15</sup>

10. *Gagnon* was decided ten years after *Gideon v. Wainwright*,<sup>16</sup> which determined that under the Sixth Amendment, a case-by-case determination of the right to counsel at trial was unconstitutional.<sup>17</sup> The *Gideon* and *Gagnon* decisions are nevertheless consistent, because the right to counsel in a VOP hearing stems not from the Sixth Amendment but from the Due Process Clause of the Fourteenth Amendment.<sup>18</sup>

11. Applying the same logic, any right to confront witnesses during a VOP hearing would arise from the Fourteenth Amendment where applicable, rather than from the Sixth Amendment as Jenkins argues. If the Sixth Amendment applied, admitting Janvier’s testimony about Joiner’s statement would constitute a denial of Jenkins’ right to confront an adverse witness. The Fourteenth

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<sup>14</sup> *Id.* at 790.

<sup>15</sup> *Id.*

<sup>16</sup> 372 U.S. 335 (1963).

<sup>17</sup> *Gagnon*, 411 U.S. at 788-89.

<sup>18</sup> *Id.* at 790.

Amendment, on the other hand, allows the admission of hearsay testimony when “fundamentally fair.”<sup>19</sup> The United States Supreme Court has concluded that the VOP hearing process should be sufficiently flexible to admit evidence that would not be admissible in a criminal trial, such as letters, affidavits, and other hearsay material.<sup>20</sup>

12. We conclude that the relevant federal and Delaware authorities establish that the Sixth Amendment does not apply to a VOP hearing. Notably, Jenkins does not argue that admitting Janvier’s testimony about Joiner’s confession was so fundamentally unfair that it would constitute a Due Process violation nor do the facts support any such conclusion. Jenkins, therefore, suffered no deprivation of his Constitutional rights under either the Sixth or Fourteenth Amendments.

13. Apart from any constitutional considerations, the judge did not abuse his discretion, as a purely evidentiary matter, by allowing Janvier to testify about Joiner’s confession. Jenkins had the opportunity to cross-examine the State’s witnesses during the VOP hearing, including the opportunity to question Janvier about the confession he had elicited from Joiner. The informality of the hearing, coupled with the fact that the rules of evidence do not strictly apply in a VOP

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<sup>19</sup> *Spencer v. Texas*, 385 U.S. 554, 564 (1967); *see also id.* (“[I]t has never been thought that such [due process] cases establish this Court as a rule-making organ for the promulgation of state rules of criminal procedure.”).

<sup>20</sup> *Morrissey*, 408 U.S. at 489.

proceeding, supports our conclusion that the judge's decision fell well within the exercise of reasonable discretion.

14. Jenkins also asserts that the State failed to present sufficient evidence that he had violated his probation. The State bears a lower burden of proof during a VOP hearing than during a criminal trial. In a VOP proceeding, the State need prove by only a preponderance of the evidence that a violation of probation occurred.<sup>21</sup> The evidence supporting the violation must be competent, but must only "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."<sup>22</sup>

15. The evidence presented at the VOP hearing clearly met that standard. Disregarding the contested hearsay testimony about Joiner's statement, the State presented evidence that Jenkins had confessed to selling drugs and that he had drugs in his possession when arrested. During the hearing, Jenkins also confessed to the earlier house-arrest violations that formed the basis of the original August 2003 violation report and warrant.

16. Although Janvier testified that the substance found in Jenkins' possession field-tested positive for heroin, Jenkins argues that the State failed to provide and introduce the Medical Examiner's Report proving that the substance

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<sup>21</sup> *Weaver v. State*, 779 A.2d 254, 259 (Del. 2001).

<sup>22</sup> *Brown*, 249 A.2d at 272 (citation omitted).



found in Jenkins' possession was in fact heroin. Given the nature of the proceedings and the substantial weight of all the evidence, including Jenkins' confession, this argument has no merit. To reiterate, the rules of evidence that apply in a criminal trial do not apply in a VOP hearing. The police officer's testimony regarding the field test was sufficient, without more, to support the judge's finding.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice