

IN THE SUPREME COURT OF THE STATE OF DELAWARE

OMAR D. DORMAN,	§
	§
Defendant Below-	§ No. 34, 2000
Appellant,	§
	§
v.	§ Court Below— Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr.A. Nos. VS96-07-0007-02
Plaintiff Below-	§ VS96-07-0008-02
Appellee.	§

Submitted: March 24, 2000

Decided: April 14, 2000

Before **WALSH, HOLLAND** and **HARTNETT**, Justices

ORDER

This 14th day of April 2000, 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 defendant-appellant, Omar D. Dorman, filed this appeal from an order of the Superior Court finding him in violation of probation. The State has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Dorman's opening brief that the appeal is without merit.¹ We agree and AFFIRM.²

¹Supr. Ct. R. 25(a).

(2) On January 14, 2000, the Superior Court found Dorman guilty of two counts of violation of probation (“VOP”). For the first violation, Dorman was sentenced to 6 months incarceration at Level V, with credit for time served, to be suspended after 90 days for 3 months probation at Level III. For the second violation, Dorman was sentenced to 6 months incarceration at Level V, to be suspended after 90 days for 6 months probation at Level III.

(3) In this appeal, Dorman claims that, first, his constitutional right to counsel was violated because he was not provided an attorney at his VOP hearing and, second, his constitutional right to due process was violated because the hearing was not “full, fair and adequate.”

(4) Dorman’s claim that he was entitled to legal representation at the VOP hearing is without merit. The federal Constitution does not afford an indigent person with an absolute right to assistance of counsel in a probation violation proceeding.³ Rather, “counsel should be provided in cases where the probationer raises ‘a timely and colorable claim (i) that he has not committed the alleged violation of the conditions upon which he is

²On April 3 and April 5, 2000, Dorman filed pleadings responding to the State’s motion to affirm. Those pleadings are hereby stricken as non-conforming documents. Supr. Ct. R. 25(a); 34.

³*Jones v. State*, Del. Supr., 560 A.2d 1056, 1057 (1989).

at liberty; or (ii) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, and that the reasons are complex or otherwise difficult to develop or present.’”⁴

(5) In this case, the hearing transcript reflects that Dorman admitted he violated his probation, first, by failing to return to the Sussex Work Release Center after being given a pass and, second, by being arrested on new charges of forgery, conspiracy and theft while out on escape status. Moreover, the reason offered by Dorman in mitigation of his violation of probation—that he and his aunt were insulted by certain officers at the work release center—was neither substantial nor complex. Under these circumstances, the Superior Court was not obligated to appoint counsel to represent Dorman.

(6) Dorman’s claim that he did not receive a full and fair hearing is also without merit. While a defendant at a VOP hearing is entitled to certain minimum requirements of due process,⁵ “[t]he United States Supreme Court has held that due process does not necessitate that an indigent person be afforded the usual ‘trial rights’ in a probation violation

⁴*Jones v. State*, 560 A.2d at 1058 (quoting *Gagnon v. Scarpelli*, 411 U.S. 778, 790 (1973)).

proceeding.”⁶ A VOP hearing may be informal or summary;⁷ hearsay evidence is admissible as long as there is some competent evidence to prove the violation asserted;⁸ and there is no absolute right to legal representation.⁹ We have reviewed the transcript of the VOP hearing in this case and conclude that there was no violation of Dorman’s due process rights.¹⁰

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State’s motion to affirm is GRANTED. The judgment of the Superior Court is hereby AFFIRMED.

BY THE COURT:

Randy J. Holland
Justice

⁵*Perry v. State*, Del. Supr., 741 A.2d 359, 362-63 (1999).

⁶*Id.* at 362 (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 789-90 (1973)).

⁷11 Del. C. § 4334(c).

⁸*Brown v. State*, Del. Supr., 249 A.2d 269, 273 (1968).

⁹*Jones v. State*, 560 A.2d at 1057.

¹⁰*See Perry v. State*, 741 A.2d at 363.

