

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SEAN D. PROSPERO, SR.,

Defendant Below,
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below,
Appellee.

No. 355, 1999

Court Below: Superior Court of
the State of Delaware, in and for
Sussex County, in Cr.A. Nos. S98-
06-0483; S98-06-0485; S97-10-
0082.

Def. ID Nos. 9806008601 &
9709017103

Submitted: January 6, 2000

Decided: February 24, 2000

BEFORE VEASEY, Chief Justice, WALSH and BERGER, Justices.

ORDER

This 24th day of February 2000, upon consideration of the appellant's opening brief and appendix and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a),¹ it appears to the Court that:

(1) In March 1998, the appellant, Sean Prospero ("Prospero"), pleaded guilty in the Superior Court to Receiving Stolen Property. Prospero

¹ On January 19, 2000, the appellant 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 appellant's response, entitled "Reply Brief," was not considered by the Court.

was sentenced to one year at Level V, with credit for time served, suspended for one year at Level III. In September 1998, Prospero pleaded guilty in the Superior Court to Possession of Cocaine and Possession of Drug Paraphernalia. Prospero was sentenced to two years at Level V, suspended for one year at Level III, followed by one year at Level II.

(2) On February 22, 1999, the Superior Court found Prospero guilty of violating his probation. Prospero's probation was revoked, and he was sentenced to three years at Level V, with credit for time served, suspended for one year at a Level IV residential substance abuse treatment program. Upon Prospero's successful completion of the program, the balance of Level IV was ordered suspended for three months at Level IV or Level III aftercare, followed by two years at Level III.

(3) It appears from the record that on July 14, 1999, the Department of Correction issued an administrative warrant discharging Prospero from the Crest program for having violated the conditions of his Level IV supervision, i.e., the behavioral rules and regulations of the program. Attached to the administrative warrant was a memorandum dated July 14, 1999, from the

Crest program director, setting forth the behavioral infractions which led to Prospero's discharge from the program.

(4) At a violation of probation hearing on July 30, 1999, the Superior Court found Prospero guilty of violating his Level IV supervision. Prospero was sentenced to a total of three years at Level V, with credit for time served, suspended for the completion of the Level IV Crest program. Upon Prospero's successful completion of the Crest program, the balance of the Level IV sentence was to be suspended for a total of two years at Level III probation. This appeal followed.

(5) On appeal, Prospero alleges that the July 30 violation of probation hearing violated the due process rights afforded to him by Superior Court Criminal Rule 32.1.² Specifically, Prospero claims that he did not receive written notice of the hearing, was not informed of the evidence against

² Superior Court Criminal Rule 32.1 provides that a person charged with a violation of probation shall be given:

- (A) Written notice of the alleged violation;
- (B) Disclosure of the evidence against the person;
- (C) An opportunity to appear and to present evidence in the person's own behalf;
- (D) The opportunity to question adverse witnesses; and
- (E) Notice of the person's right to retain counsel and, in cases in which fundamental fairness requires, to the assignment of counsel if the person is unable to obtain counsel.

him, was denied the opportunity to present evidence and to question adverse witnesses, and was denied the right to counsel.

(6) Prospero's claim that he did not receive written notice of the violation of probation hearing is belied by the record. The record includes a copy of the Superior Court's letter of July 16, 1999, that informed Prospero of the date and time of the July 30 hearing. The Superior Court's July 16 letter referenced a July 15 "videophone capias return to Superior Court" at which Prospero was cited for having violated his Level IV status. Furthermore, although it is not entirely clear, it appears from the record that the letter enclosed, or purported to enclose, a copy of the administrative warrant with attached memorandum regarding Prospero's behavioral infractions.

(7) Assuming that the Superior Court's July 16 letter did not enclose the warrant and memorandum, the record does not support Prospero's contention that, without the memorandum, he was unable to "mount a defense." To the contrary, it appears that Prospero was familiar with the events leading to, and the reasons for, his discharge from the Crest program and the resulting charge of violation of probation. Indeed, at the hearing

Prospero presented his version of the events in an attempt to justify or mitigate the violation.³

(8) Furthermore, it does not appear that Prospero was denied the opportunity to question adverse witnesses. No witnesses testified at the hearing. The Superior Court relied, as it had a right to do, on the program memorandum describing the behavioral infractions to establish the violation of probation.⁴

(9) Finally, contrary to Prospero's claim on appeal, it does not appear that the Superior Court was obligated, under the circumstances of this case, to appoint counsel to represent Prospero at the violation of hearing. This proceeding did not present any substantial or complex issues that would entitle Prospero to the appointment of counsel.⁵

³ According to Prospero, he did not commit one of the infractions (damaged a clock radio); he did commit a second infraction (became verbally aggressive with his counselor); and he was justified in committing the other infractions (exhibited inappropriate negative behaviors and refused to participate in program).

⁴ *See* 11 *Del. C.* § 4334(c) (providing that a violation of probation hearing may be informal or summary); *see also Brown v. State*, Del. Supr., 249 A.2d 269, 272 (1968) (providing that hearsay evidence is admissible at a violation of probation hearing so long as there is competent evidence to prove the alleged violation).

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

(10) It is manifest on the face of Prospero's opening brief that this appeal is without merit. The issues presented on appeal are controlled by settled Delaware law, and to the extent that judicial discretion is implicated, clearly 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 hereby AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice