

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID M. ARVEY,	§	
	§	No. 634, 2001
Defendant Below,	§	
Appellant,	§	Court Below--Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County in
	§	Cr.A. Nos. 97-03-0137.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9703002429

Submitted: March 14, 2002

Decided: April 29, 2002

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

**ORDER**

This 29<sup>th</sup> day of April 2002, upon consideration of the appellant's opening brief and the State of Delaware's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) In July 1997, the appellant, David M. Arvey, pled guilty pursuant to Superior Court Criminal Rule 11(e)(1)(c), to a charge of Unlawful Imprisonment in the First Degree. Arvey was sentenced as a habitual criminal to eight years at Level V imprisonment, suspended after two years for six years of decreasing levels of probation.

(2) On November 19, 2001, Arvey was charged with violation of probation (VOP). By letter dated November 21, 2001, the Superior Court informed Arvey that the VOP hearing was scheduled for November 30, 2001.

The Superior Court advised Arvey to contact his attorney if he intended to have legal counsel at the hearing.

(3) Arvey appeared *pro se* at the November 30 VOP hearing. At the conclusion of the hearing, the Superior Court adjudged Arvey guilty of VOP and sentenced him to a total of six years at Level V, suspended upon completion of the Key Program, for one year at Level III Aftercare followed by three years at Level II probation.

(4) In his opening brief on appeal, Arvey claims that his rights were violated because he did not have legal representation at the November 30 VOP hearing. Arvey argues that, because he was not provided with counsel at the hearing, he was deprived of his constitutional right to due process.

(5) A probationer is entitled to certain minimum requirements of due process.<sup>1</sup> There is, however, no absolute right to the appointment of counsel at a VOP proceeding.<sup>2</sup> A probationer is entitled to representation at a VOP hearing when the probationer raises:

‘a timely and colorable claim (i) that he has not committed the alleged violation of the conditions upon which he is 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.’<sup>3</sup>

(6) Arvey claims that he was entitled to counsel at the November 30 VOP hearing. His claim is not persuasive. By letter dated November 21, 2001, the Superior Court informed Arvey of the upcoming November 30 VOP hearing and advised him to contact counsel if he desired legal representation. Arvey chose not to retain counsel and did not object to proceeding without

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<sup>1</sup>See *Gagnon v. Scarpelli*, 411 U.S. 778, 786 (1973). See also Del. Super. Crim. R. 32.1

<sup>2</sup>*Jones v. State*, 560 A.2d 1056 , 1057 (Del. 1989).

<sup>3</sup>*Id.* at 1058 (quoting *Gagnon v. Scarpelli*, 411 U.S. 778, 790 (1973)).

counsel at the VOP hearing. Moreover, during the hearing, Arvey admitted that he had violated one of the conditions of probation when he failed to report to his probation officer.<sup>4</sup> The reasons offered by Arvey in mitigation of the violation were not complex or otherwise difficult to develop or present. Under these circumstances the Superior Court was not obligated to appoint counsel to represent Arvey.

(7) It is manifest on the face of Arvey's opening brief that this appeal is without merit. The issues raised are clearly controlled by settled Delaware law, and to the extent the issues on appeal implicate the exercise of judicial discretion, there was no abuse of discretion.

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<sup>4</sup>The VOP hearing transcript reflects the following exchange:

THE COURT: Did you abscond from Probation, sir?

THE DEFENDANT: Your Honor, I didn't report to Probation, right. That charge is right.

Hr'g. Tr., Nov. 30, 2001, at 2.

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/Joseph T. Walsh  
Justice