

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM McGEEHAN,	§
	§ No. 145, 2006
Defendant Below,	§
Appellant,	§ Court Below – Superior Court
	§ of the State of Delaware,
v.	§ in and for Sussex County
	§ Cr. A. No. 03-01-1294
STATE OF DELAWARE,	§
	§
Plaintiff Below,	§
Appellee.	§

Submitted: October 4, 2006
Decided: October 16, 2006

ORDER

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

This 16th day of October 2006, it appears to the Court that:

1) The defendant-appellant, William McGeehan, has appealed the Superior Court's revocation of his probation. McGeehan argues that he was deprived of his due process rights because he was not given notice nor represented by counsel when sanctioned for a prior violation of probation by testing positive for cocaine. In addition, he argues that he was never informed that he needed medical documentation to be excused from attending a probation required weekend intervention.

2) The record reflects that McGeehan was serving probation after incarceration for two DUI convictions. As part of his probation, McGeehan

was to report to Treatment Access Center (“TASC”) monitoring.¹ TASC requires the probationer to report to regular court appointments so the court can review the probationer’s progress. On February 3, 2006, McGeehan appeared before Superior Court for one of his regularly scheduled appointments. The TASC case manager reported to the court that McGeehan tested positive for cocaine several days earlier.² Additionally, the TASC manager recommended that McGeehan be ordered to attend the Crest Weekend Intervention Program for four consecutive weekends.³

3) The Superior Court then gave McGeehan the choice of either four weeks of weekend interventions or a “full-blown violation of probation.”⁴ McGeehan chose the weekend interventions.⁵ The Superior Court then sentenced McGeehan to 18 months at Level V, suspended for one year at Level III and required McGeehan to participate in four consecutive weekend interventions at the Crest Weekend Intervention Program beginning February 11, 2006.

¹ TASC is designed to “coordinate the provision of substance abuse evaluation and treatment by public and private providers to criminal defendants” Del. Code Ann. tit. 11, § 6582(c).

² The test was administered on January 30, 2006.

³ McGeehan signed the intervention contract the day before the court appointment, so he was aware of the test results at least one day before the hearing.

⁴ (“Let me ask you this. Do you want to resolve it that way [going to four weekend-long interventions], or do you want to set it down for a full-blown violation of probation.”).

⁵ McGeehan actually signed the contract to attend the weekend interventions on February 2, 2006.

4) On Saturday, February 11, 2006, the first day he was supposed to attend the intervention, McGeehan called the Crest Program and left a message explaining that he was feeling ill and would not be attending. Crest returned McGeehan's telephone call, but he did not answer. He also did not call back in response to Crest's voice message. McGeehan reported to his probation officer on Monday, February 13, and explained he was ill over the weekend.⁶ He was arrested for failing to report to Crest in violation of his probation.

5) McGeehan contested his probation violation in the Superior Court on February 21, 2006. The Superior Court found him in violation of probation because he did not appear and had not produced any medical testimony to support his excuse. The Superior Court revoked his probation and sentenced him to one-year imprisonment at Level V suspended on completion of a Level V Key substance abuse treatment for the balance of the term at Level IV Crest and Level IV Crest Aftercare.

6) McGeehan's first argument is that the Superior Court erred at the February 3, 2006, violation of probation hearing. According to McGeehan, he was denied his right to due process because he was not represented by counsel and not given proper notice of the hearing and the

⁶ McGeehan's probation officer testified that he appeared to be "congested" and "was coughing little bit" but did not appear to have any "physical illness."

charge against him. McGeehan's claim that he did not have notice of the hearing or possible weekend intervention sanctions is not supported by the record. McGeehan was advised before the February 3, 2006, hearing that he had tested positive for cocaine. In addition, McGeehan knew that the weekend interventions were a possible sanction, as evidenced by the fact that he signed the intervention contract on February 2, 2006, the day *before* the hearing.

7) A probationer has certain minimal due process rights at a violation of probation hearing.⁷ The right to counsel, however, is limited to situations when "the probationer raises a timely and colorable claim (i) 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."⁸ McGeehan's revocation does not fit into either category. He did not dispute using cocaine. There were no substantial and complex reasons which justified or mitigated the violation or made revocation inappropriate.

8) McGeehan's second argument is that he did not know that he would need documented proof of his illness in order to abstain from

⁷ *Sparks v. State*, 2000 WL 72642 (Del. Supr.) (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 789 (1973)).

⁸ *Sparks v. State*, 2000 WL 72642 (citing *Jones v. State*, 560 A.2d 1056, 1058 (Del. 1989)).

attending an intervention. He points to the lack of instruction in the intervention contract as to what steps are necessary to excuse him from attending a weekend intervention.

9) Probation is an act of grace and the trial judge “has broad discretionary power when deciding whether or not to revoke probation.”⁹ McGeehan failed to attend the Crest intervention program contrary to an express order that he do so. He did not answer the telephone or return the call from Crest. The lack of medical documentation was properly considered in assessing the credibility of McGeehan’s assertion that he was too ill to attend. This was his third violation of probation. Given this history, the Superior Court found that “this is a gentleman who violates probation.” The record reflects the Superior Court did not abuse its discretion in revoking McGeehan’s probation.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

⁹ *Kurzmann v. State*, 903 A.2d 702, 716 (Del. 2006).