

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDRE B. BARTLEY,	§
	§ No. 191, 2006
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. 0207018409
	§
Plaintiff Below-	§
Appellee.	§

Submitted: November 17, 2006
Decided: December 27, 2006

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

ORDER

This 27th day of December 2006, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Andre B. Bartley, filed an appeal from the Superior Court’s March 23, 2006 order denying his motion for sentence modification. We find no merit to the appeal. Accordingly, we affirm.

(2) In November 2003, Bartley pleaded guilty to two counts of Reckless Endangering in the First Degree in connection with a violent drive-by shooting. Additional charges of assault, conspiracy and weapon violations were dismissed by the State in exchange for the guilty plea. Bartley was sentenced to a total of 6 years of Level V incarceration at Level

V, to be suspended after successful completion of the Key Program for Level III probation.

(3) In August 2004, only a few weeks after his probation began, Bartley was arrested in connection with three separate incidents involving a firearm. He was charged with two counts of assault, conspiracy and weapon violations. Bartley had also violated other conditions of his probation by failing to abide by his curfew and failing to complete the Crest Aftercare program. A contested VOP hearing took place on November 18, 2004. Craig Watson, Bartley's probation officer, and Scott Chaffin, a Wilmington Police Department detective, testified.

(4) Chaffin stated that, on August 12, 2004, he interviewed an individual named David Reynolds at the Christiana Hospital about a shooting incident near 30th Street in Wilmington. Reynolds was being treated for a gunshot wound and identified Bartley in a photo line-up as one of two men who fired at him with a handgun. Relying on information provided by Reynolds, Chaffin subsequently interviewed another individual named Dante Thomas whose minibike had recently been stolen by four armed men. Thomas told Chaffin that, when he located the stolen minibike at the Riverside projects in Wilmington, the same men threatened him and one of them hit him in the head with a gun. Both Thomas and Thomas'

girlfriend, Mahogany Jones, who had accompanied him to the Riverside projects, identified Bartley in a photo line-up as the man who had struck Thomas.

(5) Bartley did not testify at the hearing and no other witnesses were presented on behalf of the defense. The Superior Court stated that the evidence presented by the State, while consisting almost exclusively of hearsay, was, nevertheless, sufficient to support its finding that Bartley had violated his probation. Bartley's probation was revoked and he was sentenced to a total of 5 years of Level V incarceration, to be suspended after 4 years for decreasing levels of probation.

(6) In this appeal, Bartley claims that the Superior Court abused its discretion by not granting his request for a reduction of his VOP sentence. He argues that, because a Superior Court jury ultimately acquitted him of several of the new charges and the others were dismissed by the State, the Level V portion of his VOP sentence, which was based on hearsay evidence, should have been reduced to time served.¹

¹ Bartley cites this Court's recent decision in *Collins v. State*, 897 A.2d 159 (Del. 2006) as support for his argument. In *Collins*, this Court reversed the Superior Court's finding of a VOP, which was based solely on hearsay evidence.

(7) A probation hearing may be informal or summary in nature.² It does not require the full panoply of procedural safeguards associated with a full-blown criminal trial.³ The normal rules of evidence are not applicable to a probation hearing.⁴ However, “some competent evidence to prove the violation asserted” must be presented.⁵

(8) It is true that the evidence presented at Bartley’s hearing consisted almost exclusively of hearsay. It is also true that, at Bartley’s subsequent trials, he was found not guilty of several of the charges against him and the remaining charges were dismissed. However, the record reflects that pressure had been applied to convince witnesses Dante Thomas, Mahogany Jones and David Reynolds not to testify against Bartley. At Bartley’s first trial, both Thomas and Jones denied identifying Bartley to the police. While their prior police statements were admitted under Del. Code Ann. tit. 11, § 3507, the evidence apparently was not sufficient for the jury to convict Bartley beyond a reasonable doubt. At Bartley’s second trial, Reynolds failed to appear to testify against Bartley and the case was

² Del. Code Ann. tit. 11, § 4334(c).

³ *Black v. Romano*, 471 U.S. 606, 613 (1985).

⁴ D.U.R.E. 1101(b) (3).

⁵ *Brown v. State*, 249 A.2d 269, 272 (Del. 1968).

dismissed.⁶ We conclude, under the particular circumstances of this case, that the Superior Court correctly held that there was sufficient competent evidence to support its finding of a VOP.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁶ It would be reasonable to assume that the State either was, or would have been, unable to secure the live testimony of the witnesses for purposes of the VOP hearing either. Importantly, these factual circumstances did not exist in *Collins v. State*.