



IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES L. PLACHES,)
)
Defendant Below-)
Appellant,) No. 126, 2020
) ON APPEAL FROM
) THE SUPERIOR COURT OF THE
v.) STATE OF DELAWARE
) ID Nos. 0912004522, 1402007837
STATE OF DELAWARE,)
)
Plaintiff Below-)
Appellee.)

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
DELAWARE IN AND FOR KENT COUNTY

REPLY BRIEF

COLLINS & PRICE

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Dated: November 15, 2021

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Appellant James Plaches, through the undersigned attorney, replies to the State's Answering Brief as follows:

ARGUMENT

I. THE SUPERIOR COURT ERRED IN FINDING THAT MR. PLACHES VIOLATED THE CONDITIONS OF HIS PROBATION.

The State's Answering Brief contains irrelevant surplusage that this Court should decline to consider. The State notes that this appeal has taken a long time because Mr. Plaches sought several extensions when he was a *pro se* litigant.¹ That is not relevant. The posture of this appeal is that this Court denied the State's Motion to Affirm and ordered the appointment of counsel.² Similarly irrelevant is the State's lengthy recitation of the details of Mr. Plaches' prior criminal history – both the underlying offenses resulted in his probation and other offenses.³ The number Mr. Plaches' prior violations of probation is likewise not relevant.⁴

Mr. Plaches did not violate probation by reporting police contact as required.

The only issue relevant to this appeal is whether the Superior Court erred in finding Mr. Plaches in violation for reporting police contact, as he was required to do. The Superior Court did err, and this Court should reverse.

¹ Ans. Br. at 1.

² A133-134.

³ Ans. Br. at 3-4.

⁴ Ans. Br. at 3.

The State attempts to shift the narrative from the actual violation found by the Superior Court: “in Plaches’ case a probation violation existed if the probationer violated any of the three conditions cited in the Administrative Warrant.”⁵ But the order being appealed from is the Superior Court’s order finding Mr. Plaches in violation for admitting police contact. The Court made only one finding: that Mr. Plaches admitted police contact.⁶ Then the judge held, “obviously, the Court must find Mr. Plaches in violation of the terms and conditions of his probation.”⁷ As such, the Court found, erroneously, that Mr. Plaches violated his probation by *abiding* with Condition #2: “You must report any new arrest, conviction, or police contact within 72 hours to your supervising officer.”⁸

The Court did not find Mr. Plaches in violation of the other two conditions PO Vorous alleged: conditions 5 and 13.⁹ As such, alleged violations of those conditions are not before this Court on appeal.

⁵ Ans. Br. at 11-12.

⁶ A81.

⁷ A82.

⁸ A26.

⁹ *Id.* A fourth condition was added in the Supplemental Report. As noted in the Opening Brief, PO Vorous caused Mr. Plaches to be arrested between VOP hearings for Falsely Reporting an Incident to Law Enforcement. The State later entered a *nolle prosequi* on this charge. *See*, Op. Br. at 9-10.

The State seems to agree that Mr. Plaches duly reported police contact as required.¹⁰ So, the State seeks to convince this Court that it can find that Mr. Plaches violated *other* conditions, even though the Superior Court did not:

Even if Plaches can show plain error and carry his burden of persuasion as to the reporting police contact probation condition, the other two probation conditions Plaches violated by improperly leaving his residence and not abiding by his curfew are still sufficient to prove a VOP.¹¹

With this argument, the State is asking this Court to make factual and legal findings that the Superior Court did not make and are not on appeal. Or to put it another way, the State asks this Court to find Mr. Plaches in violation in the first instance. Because the Superior Court did not find Mr. Plaches in violation of conditions 5 and 13, those issues may not be raised on appeal. Nevertheless, Mr. Plaches did not violate those conditions either.

Mr. Plaches did not commit any of the alleged violations.

The record is clear that any time Mr. Plaches went from his house to stay at a hotel, he duly sought and received permission from Probation.¹² The reason for the approval was that Mr. Plaches indicated children would be present at his home. The record is murky about *which* children would be present. At one point, Mr.

¹⁰ Ans. Br. at 13.

¹¹ *Id.*

¹² A39, A41.

Plaches stated it was his girlfriend Christina Hays' family.¹³ But also, Mr. Plaches' lawyer admitted a notarized document from Mr. Plaches' sister Estelle Young, indicating it was in fact her grandchildren that were going to visit that weekend.¹⁴ This issue could have been fleshed out had the Superior Court held a hearing. Regardless, Mr. Plaches did comply with conditions 5 and 13: he received permission from Probation for everything he did that weekend.

The State elides the fact that PO Vorous was not truthful with the Superior Court. Vorous stated Christina Hays called the police to say, "come get me out of this house because I don't want to have to defend myself."¹⁵ The police reports establish that it was Hays' sister who called the police because Hays was "drinking and acting weird."¹⁶ Vorous also told the judge that Hays had "visible bruises,"¹⁷ and Mr. Plaches only avoided new charges due to the "reluctancy of the victim."¹⁸ Neither assertion is accurate.

The police reports establish that Hays has a history of mental health issues and alcohol abuse. Police checked on her on January 3, 2020 at the request of

¹³ A37.

¹⁴ A86.

¹⁵ A41.

¹⁶ A48.

¹⁷ A39.

¹⁸ A40.

Hays' sister. She was intoxicated and wanted to be taken to a hotel, because she did not want to be around Mr. Plaches.¹⁹

On January 7 and 8, 2020, Hays gave inconsistent accounts of an alleged domestic incident with Mr. Plaches.²⁰ On January 7, 2020, a Camden police officer and two State Troopers saw no sign of injury to Hays.²¹ Yet one day later, Vorous would report having seen visible bruises on Hays.²²

In any event, whether Mr. Plaches was mistaken about whether there were going to be children at his house that weekend, or whether he lied to PO Vorous so he could leave his house and stay in a motel was never established, because the Court did not hold a hearing. Even at the proceeding that did occur, the allegation that Mr. Plaches lied about why he needed to leave his residence was not established by non-hearsay evidence as required.²³ The information came from a phone call from an unnamed member of the Hays' family in a call to PO Vorous.²⁴ As this Court has held, "inadmissible hearsay, without some corroborating admissible evidence, is 'a basis too untrustworthy to terminate a person's freedom.'"²⁵

¹⁹ A48.

²⁰ A49, A51.

²¹ A51.

²² A39.

²³ *See, Rossi v. State*, 140 A.3d 1115, 1124 (Del. 2016).

²⁴ A39.

²⁵ *Rossi* at 1120, *citing Brown v. State*, 249 A.2d 269, 272 (Del. 1968).

The record establishes conclusively that Mr. Plaches did not violate the condition for which the Court found him in violation. He duly reported police contact that resulted in no arrest. As to the other conditions, it is also clear that Mr. Plaches had permission from Probation for all his movements during the relevant timeframe. Any allegation that Mr. Plaches was dishonest with his probation officer was not proven by competent, non-hearsay evidence. As such, this Court should reverse the judgment of the Superior Court and vacate its order.

CONCLUSION

For the foregoing reasons, as well as those stated in the Opening Brief, Appellant James Plaches respectfully requests that this Court reverse the judgment of the Superior Court.

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