

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES L. PLACHES,)
)
 Defendant Below-) **No. 126, 2020**
 Appellant,)
 v.)
)
 STATE OF DELAWARE,)
)
 Plaintiff Below-)
 Appellee.)

**ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE**

STATE'S ANSWERING BRIEF

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DATE: November 2, 2021

TABLE OF CONTENTS

| | <u>Page</u> |
|---|--------------------|
| TABLE OF CITATIONS | ii |
| NATURE AND STAGE OF THE PROCEEDINGS | 1 |
| SUMMARY OF ARGUMENT | 2 |
| STATEMENT OF FACTS | 3 |
| ARGUMENT | |
| I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN DETERMINING THAT PLACHES VIOLATED HIS PROBATION | 8 |
| CONCLUSION | 16 |

TABLE OF CITATIONS

| CASES | <u>Page</u> |
|--|--------------------|
| <i>Brown v. State</i> , 897 A.2d 748 (Del. 2006)..... | 13 |
| <i>Collins v. State</i> , 897 A.2d 159 (Del. 2006)..... | 11,12 |
| <i>Cruz v. State</i> , 990 A.2d 409 (Del. 2010)..... | 11 |
| <i>Dickerson v. State</i> , 2013 WL 1559650 (Del. Apr. 11, 2013)..... | 11 |
| <i>Mayes v. State</i> , 604 A.2d 839 (Del. 1992)..... | 11 |
| <i>Morales v. State</i> , 133 A.3d 527 (Del. 2016)..... | 8 |
| <i>Rossi v. State</i> , 140 A.3d 1115 (Del. 2016)..... | 8,12 |
| <i>Thompson v. State</i> , 192 A.3d 544 (Del. 2018)..... | 8 |
| STATUTES AND OTHER AUTHORITIES | |
| Del. Supr. Ct. R. 8..... | 8 |
| 11 <i>Del. C.</i> § 4334(c)..... | 11,12 |
| D.R.E. 801(d)(2)(A)..... | 12 |

NATURE AND STAGE OF THE PROCEEDINGS

The State of Delaware generally adopts the Nature and Stage of the Proceedings as contained in the October 4, 2021 Opening Brief of Appellant James L. Plaches. This is the State's Answering Brief in opposition to Plaches' appeal of his February 24, 2020 Kent County Superior Court Violation of Probation (VOP) conviction and sentence for a sixth probation violation.

A major reason the instant VOP appeal has been pending so long is that Plaches requested at least 5 extensions to file his *pro se* Opening Brief. This Court granted Plaches filing extension on August 17, 2020; September 29, 2020; November 6, 2020; December 4, 2020; and March 1, 2021. After this Court on April 16, 2021 denied Plaches' *pro se* page extension motion, the *pro se* Opening Brief (A-90-127) was filed on May 7, 2021.

SUMMARY OF ARGUMENT

I. DENIED. The Superior Court did not abuse its discretion in finding James L. Plaches in violation of his Level III probation after conducting a February 24, 2020 violation of probation (VOP) hearing. (A-81-83). In January 2020 Plaches violated at least two conditions of his probation - reporting change of address and observing curfew - by falsely claiming there were minor children present in his residence and because he was prohibited from being in the presence of children as a Tier III registered sex offender Plaches was absent from his place of residence from January 3-7, 2020. (A-31-32, 78-79).

STATEMENT OF FACTS

Following his December 9, 2009 arrest (A-2), on July 7, 2010, James L. Plaches entered into a plea bargain agreement at final case review in the Sussex County Superior Court where Plaches pled guilty to 3 offenses - third-degree rape (a lesser included offense of first degree rape); breach of conditions of bond; and tampering with a witness - in exchange for the dismissal of 16 other pending charges. (A-4). Plaches' rape victim was 11 years old. (A-31). During the pendency of the prosecution, Plaches contacted the victim in an attempt to have the child change his testimony. (A-31). As a result of the 2010 rape conviction, Plaches was classified as a Tier 3 sex offender. (A-31). Plaches had prior criminal histories in Ohio, Rhode Island and New York State, including earlier convictions for second degree robbery, first degree perjury, and numerous thefts. (A-31).

While on probation for the 2010 Delaware convictions, on June 12, 2014 Plaches pled guilty to exploiting the assets of an infirm person. (A-17). After his release from Level V custody, the Superior Court found Plaches guilty 5 times between 2013 and 2018 of probation violations stemming from his 2010 Superior Court felony conviction. (A-1, 33). According to Probation Officer Jessica L. Vorous (A-26, 34), "Mr. Plaches has an extensive multi-state criminal history of violence, deceit and manipulation." (A-31). Although Plaches "has served

approximately 21 terms of probation . . . ,” he has never successfully completed a probationary sentence term. (A-31).

After Plaches’ May 22, 2018 fifth VOP, the Superior Court resentenced Plaches to the Level V Key Program. (A-31). On April 5, 2019, Plaches was released from Level V custody (A-31), and in October 2019 Plaches reported employment with Easter Seals “as a care giver to his elderly mother.” (A-31).

A January 9, 2020 sex offender probation administrative warrant (A-26), and a January 16, 2020 Level III Probation Violation Report (A-27-34) charged Plaches with a sixth violation of probation (VOP) of his 2010 convictions, as well as a third violation of the 2014 conviction. (A-31).

The January 16, 2020 Level III VOP Report (A-27-34) alleged that Plaches violated Conditions 2, 5, and 13 on or between January 3 and 7, 2020. (A-28-29, 31-32). Condition 2 required Plaches to report any police contact to his probation officer within 72 hours. (A-28). Condition 5 required a report of any change of residence and / or employment within the same 72 hour time period. (A-28). Finally, Condition 13 required Plaches to observe any prescribed curfew. (A-29).

The Kent County Superior Court conducted a VOP hearing for Plaches on January 24, 2020. (A-35-47). Initially, at the hearing Plaches’ defense counsel informed the Court, “. . . the allegations are that Mr. Plaches had stayed at a hotel, but had been lying to his probation officer about staying at the hotel or the reason

for staying there, as well as being not present at the residence in violation of his curfew.” (A-38). Next, Plaches confirmed that in January 2020, he and his fiancée, Christina L. Hayes, went to a Holiday Inn (A-37) because Hayes’ “family was supposed to be coming down from out of state and they have children. I’m not allowed to be around children because I’m a sex offender.” (A-36).

Probation Officer Jessica L. Vorous informed the Superior Court at the hearing that on the evening of January 3, 2020 the probation monitoring center received a telephone call from Plaches “stating that family had come out of town unexpected, they had children, he needed to leave immediately. He was going to a motel” (A-38). On January 5, Plaches again telephoned the probation monitoring center and reported that “the children are still there, I need to stay at another hotel.” (A-38). The next day, January 6, Plaches reported to Probation Officer Vorous. (A-38). During this meeting Vorous said that Plaches “. . . was adamant there was children at the house, he could not return, he had no idea when the children were leaving.” (A-38-39).

Although Plaches told probation on three different days that there were children at his mother’s home in early January 2020, Vorous learned later that Plache’s claim about the presence of children in the house was false, and that “There were no children there at all all weekend.” (A-39). Family members of Christina Hayes telephoned Officer Vorous from New Hampshire, stating that

“[t]hey were concerned for the fiancée who was attempting to leave him [Plaches] over the weekend, and she was going from hotel to hotel, he was following her, and they were engaged in a domestic dispute over the weekend.” (A-39).

Vorous did not dispute that Plaches said he was going to stay at two motels, but she told the Superior Court, “He lied. He was given permission to go because there was children in the house. There were no children in that house.” (A-41). In response, Plaches reiterated that Hayes “. . . was concerned that her sister was coming in with her nieces and nephews and she didn’t want me there” (A-42). Since Plaches “is disputing the allegations here,” the Superior Court Judge rescheduled the case for a contested VOP Hearing. (A-43).

A second Kent Superior Court contested VOP Hearing for Plaches convened a month later on February 24, 2020. (A-64-85). Although the defense contention at the first VOP Hearing was that Hayes’ family was travelling with children to visit Delaware (A-36, 42), the defense explanation for Plaches leaving his mother’s home was not that Hayes’ family was to arrive with children, but that Plaches’ sister, Estelle L. Young, “was coming from Pittsburgh that weekend” and bringing her grandchildren. (A-70, 86). In a written statement Young said she and her grandchildren were to visit Plaches’ mother in Delaware from January 2-5, 2020, but because of an “unexpected Death on January 2nd,” she never made the trip from Pittsburgh. (A-86).

In his extended comments to the Superior Court at the February 24 VOP Hearing (A-71-77), Plaches never addressed why he falsely told probation officials on three different days in January that children were present in his mother's home when no children were ever present at that time. Probation Officer Vorous at the VOP Hearing stated that had she known there were in fact no children in the house, Plaches would not have been given permission to go to a motel. She added that Plaches, as a Tier III sex offender, knew he was required to stay at his house and because this was his sixth violation, he knew how probation worked and what was expected of him.

At the conclusion of the February 24 VOP Hearing, the Superior Court found that Plaches had violated his probation (A-82), and resentenced Plaches for a sixth VOP. (A-82-83).

I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN DETERMINING THAT PLACHES VIOLATED HIS PROBATION

QUESTION PRESENTED

Did Plaches violate his Level III probation by leaving his residence and falsely maintaining that he could not stay at his house because minor children were visiting and he was prohibited as a registered sex offender from being in the presence of children?

STANDARD AND SCOPE OF REVIEW

This Court reviews a Superior Court's determination that a probationer has violated his probation (A-81-83) for an abuse of discretion.¹ Waived defense claims are reviewed for plain error.²

MERITS OF THE ARGUMENT

A January 9, 2020 Administrative Warrant charged Plaches with a sixth violation of his probation for violating three conditions of his Level III probation: reporting police contact; reporting any change of residence; and abiding by curfew. (A-26, 31). In her January 16, 2020 Level III Probation Violation Report (A-27-34), Probation Officer Vorous related the following chronology of Plaches' alleged probation violations:

¹ *Thompson v. State*, 192 A.3d 544, 549 (Del. 2018); *Rossi v. State*, 140 A.3d 1115, 1119 (Del. 2016).

² Del. Supr. Ct. R. 8; *Morales v. State*, 133 A.3d 527, 529 (Del. 2016).

On January 3, 2020, at approximately 1947, Mr. Plaches called the 24 hour contact number at Probation and Parole and advised that family members were visiting unexpectedly and had brought children. He reported leaving his reported residence and staying at a local hotel. On January 5, 2020, Mr. Plaches again contacted the 24 hour contact number at Probation and Parole and advised that he still could not return to his reported residence due to children being present at his home. He relocated to another local hotel. The on call officer contacted Mr. Plaches and he maintained that children were at his residence and he could not stay. On January 6, 2020, Mr. Plaches reported to the Probation and Parole office for his scheduled reporting. This Officer questioned Mr. Plaches movements over the weekend. He maintained that children were present in the residence. He further stated this "unannounced visit" caused tension and Felton Police Department were contacted. He stated he had no choice but to relocate until the children left to maintain compliance with his probation terms. On January 7, 2020, Mr. Plaches reported to the office and advised that the children had left the residence and he was returning. On January 8, 2020, this officer received a telephone call from Mr. Plaches' fiancée's concerned family members in New Hampshire. They advised of continued abuse of fiancé over the past weekend and feared for her safety. Family advised that NO family had visited over the weekend and at least two police agencies had been contacted in reference to ongoing domestic disputes. Officers immediately contacted and met with Mr. Plaches fiancé. Officers observed evidence of abuse. She verified that no children were present at her home over the weekend and that Mr. Plaches lied to Probation and Parole in order to stay with her at local motels. She reported that on January 3, 2020, she was afraid of Mr. Plaches and was attempting to leave the residence. Felton Police were contacted and escorted her to a local hotel. Mr. Plaches followed. He continued to follow her and lie to Probation and Parole. On January 7, 2020, Felton Police Department was again contacted due to a physical domestic in progress involving Mr. Plaches and his fiancé. It was determined that the physical domestic began in Camden Police Department jurisdiction and they were contacted. Unfortunately, no arrest was made. Probation and Parole contacted both Felton and Camden Police Departments to verify Mr. Plaches' fiancée's statements. See attachments of police complaint reports. Probation and Parole and the Victim Services Agent within Probation and Parole

have maintained contact with Mr. Plaches' fiancé. She continues to be afraid of retaliation from Mr. Plaches.

(A-31-32).

At the second VOP hearing, (A-64-85), Probation Officer Vorous responded to Plaches' explanation for his conduct, and she stated:

I don't know where to begin now. After listening to his speech to the Court, I guess I want to address that, yes, he did report police contact to me. That is true. However, the police contact he reported was not the police contact that happened.

I am aware that he didn't get charges. The police contact he reported to me was between his girlfriend and her sister; that he was not involved, he was just a person there, and the reason they needed to leave the house that night and go to a hotel was because there was children in the house, that her sister had brought children to the house and he needed to leave.

Permission was given for him to leave the house by the monitoring center and the on-call officer that Friday night. It was not given by me. But because he called and said there were children in the house, I'm trying to do the right thing, they permitted him to go.

There were not children in the house. Permission would not have been given. I did not learn this information until the following Monday.

I asked him what happened. He kept saying there was children in the house, I needed to leave, I needed to leave. Okay. Then on Wednesday, I heard from the girlfriend's family that there was no children, and that's why the charges were brought later because at the time, I didn't know he was lying to me. I believed him. I thought maybe there were kids there and that's why he needed to go. But more information was given by the family that was supposed to have reported, and that's why the charges were brought later.

Once again, if I had known that there were not children in the house, he would not have been given permission to go to a hotel. Being a Tier III registered sex offender, you're required to stay in your house, as he knows. With this being his sixth violation, he is well aware of how probation works and what is expected of him.

(A-78-79).

After hearing Plaches' explanation for leaving his mother's home in early January 2020 (A-71-77), as well as the comments of Plaches' defense counsel (A-68-71), the Superior Court Judge properly found Plaches in violation of his Level III probation and resentenced him. (A-81-83). The Superior Court did not abuse its' discretion in finding a sixth VOP.³ Plaches' 2020 VOP Sentence is within statutory limits.⁴ “. . . [O]nce a defendant violates the terms of his probation, the Superior Court has authority to require the defendant to serve any portion of a previously suspended Level V term.”⁵

The grant of probation is an “act of grace” and a sentencing judge has broad discretionary power when deciding whether or not to revoke probation.⁶ Delaware law requires “some competent evidence to prove the violation asserted.” This evidence must “reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation.”⁷ In Plaches' case a probation violation existed if the probationer violated any of the three Conditions

³ See *Cruz v. State*, 990 A.2d 409, 412 (Del. 2010).

⁴ See 11 *Del. C.* § 4334(c).

⁵ *Dickerson v. State*, 2013 WL 1559650, at * 1 (Del. Apr. 11, 2013) (citing *Mayes v. State*, 604 A.2d 839, 845 (Del. 1992)).

⁶ *Collins v. State*, 897 A.2d 159, 160 (Del. 2006).

⁷ *Id.*

cited in the Administrative Warrant. (A-26). The State bears the burden of proof by a preponderance of the evidence that a VOP occurred.⁸

A VOP hearing “may be informal or summary.”⁹ “The State’s burden to prove a violation of probation is much lighter than it is to convict a defendant of a crime.”¹⁰ Hearsay evidence is admissible at a VOP Hearing.¹¹ Nonetheless, the State cannot rely exclusively on hearsay evidence to establish a VOP.¹²

“Competent evidence is evidence that would be admissible at trial and that tends to prove two critical factors necessary to a violation of probation finding: i) an act constituting a violation occurred; and ii) the defendant is linked to that act.”¹³ Statements by Plaches on January 3-7, 2020 that he left his residence because children were present in his mother’s home as related by Probation Officer Vorous at the contested VOP Hearing (A-78-79) were competent evidence that was not hearsay. These statements are not hearsay because they are admissible statements of a party opponent.¹⁴ All that is required for the admission of statements of a party opponent is that the statements are offered into evidence by an adverse party. Plaches’ probation officer offered Plaches’ admission that he

⁸ *Rossi v. State*, 140 A.3d 1115, 1119 (Del. 2016).

⁹ 11 *Del. C.* § 4334(c).

¹⁰ *Rossi*, 140 A.3d at 1117.

¹¹ *Id.*, at 1117.

¹² *Id.*, at 1122. *See Collins*, 897 A.2d at 160-62.

¹³ *Rossi*, 140 A.3d at 1117.

¹⁴ D.R.E. 801(d)(2)(A).

was not at his designated residence January 3-7, 2020, and his false claim that children were present at his mother's home on those dates at Plaches' VOP Hearing. (A-78-79). The only significant hearsay evidence was the statement of Officer Vorous that "Then on Wednesday, I heard from the girlfriend's family that there was no children. . . ." (A-79).

At Plaches' second VOP Hearing, Probation Officer Vorous did agree that Plaches had reported police contact (which was also conceded by the defense) (A-65, 71-72), but she pointed out that ". . . the police contact he reported was not the police contact that happened." (A-78). Even if Plaches can show plain error and carry his burden of persuasion as to the reporting police contact probation condition,¹⁵ the other two probation conditions Plaches violated by improperly leaving his residence and not abiding by his curfew are still sufficient evidence to prove a VOP.

Here, Plaches focuses on the requirement of reporting police contact as a plain error claim and argues there was no VOP violation in January 2020 because he reported contact with the police. (Opening Brief at 17). Plaches does not address in any detail the other two conditions of probation that he violated.

Plaches somewhat mischaracterizes the VOP hearing evidence regarding his several false statements about children being present in his mother's home.

¹⁵ See *Brown v. State*, 897 A.2d 748, 753 (Del. 2006).

Plaches argues that “. . . PO Vorous relied solely on a phone call from Hays’ family, rather than asking Mr. Plaches’ family who were the ones planning to visit.” (Opening Brief at 18). This contention is only partially accurate. Vorous also relied on several non-hearsay statements on different days by Plaches himself that children were present in his mother’s home when the probationer left to stay at motels with his girlfriend. At neither of the two VOP Hearings did Plaches ever explain why he falsely and repeatedly told his probation officer that children were present in the residence.

Plaches’ untruthful statements to Vorous about the presence of children in his mother’s home and Plaches’ admission that he left the residence for four days are a sufficient basis to find that Plaches violated Conditions # 5 and 13 of his probation. (A-26). At the initial VOP hearing, Plaches said twice that Hays’ family was to visit with children (A-36, 42), not that his sister and her grandchildren were the anticipated visitors. (A-70, 86). Regardless of who the visitors were to be, Plaches falsely told probation officials that children were at his mother’s home.

Based upon Plaches’ misrepresentation and deception about his police contact and the reason for his leaving his residence to stay at motels, as well as the other evidence presented at the VOP hearings, there was sufficient competent evidence presented for the Superior Court to determine that Plaches violated his

probation a sixth time in January 2020.

CONCLUSION

The judgment of the Superior Court should be affirmed.

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AFFIDAVIT OF SERVICE

BE IT REMEMBERED that on this 2nd day of November 2021,
personally appeared before me, a Notary Public, in and for the County and State
aforesaid, Mary T. Corkell, known to me personally to be such, who after being
duly sworn did depose and state:

(1) That she is employed as a legal secretary in the Department of Justice,
102 West Water Street, Dover, Delaware.

(2) That on November 2, 2021, she did serve electronically the attached
State's Answering Brief properly addressed to:

Patrick J. Collins, Esquire
Collins & Associates
8 East 13th Street
Wilmington, DE 19801



Mary T. Corkell

SWORN TO and subscribed
Before me the day aforesaid.

John Williams
Notary Public


Member of the Delaware Bar
authorized to act as a Notary Public
pursuant to 29 Del. C. § 4323 (a)(3)

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**CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT
AND TYPE-VOLUME LIMITATION**

1. This Brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times Roman 14-point typeface using Microsoft Word.
2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 3208 words, which were counted by Microsoft Word.



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