

SUPREME COURT OF VERMONT

State v. Decoteau

182 Vt. 433 (2007) · Decided August 31, 2007

SUMMARY

The Vermont Supreme Court reviewed a probation-violation and probation-revocation proceeding in which the trial court admitted a discharge summary and hearsay testimony concerning the defendant’s removal from a residential treatment program. The court held that the hearsay lacked sufficient indicia of reliability and that the trial court failed to establish good cause for dispensing with the probationer’s confrontation rights. Because the hearsay was central to the finding that the violation was willful, the court found plain error, vacated the revocation, and remanded for a new hearing.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Johnson, J.; Burgess; Dooley; Johnson; Reiber; Skoglund
JURISDICTION	Vermont
DECIDED	August 31, 2007
DISPOSITION	vacated
PROCEDURAL POSTURE	Defendant appealed from a district court order finding a probation violation, revoking probation, and imposing the underlying sentence.
STANDARD OF REVIEW	The court reviews whether a probation violation occurred as a mixed question of law and fact; factual findings are upheld if fairly and reasonably supported by credible evidence, and legal conclusions are upheld if reasonably supported by the findings. The unpreserved evidentiary claim was reviewed for plain error.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Decoteau v. State of Vermont

TOPICS

- probation
- hearsay
- due process
- right to counsel
- preservation of error

PRACTICE AREAS

- criminal procedure
- evidence
- constitutional law
- appellate procedure

QUESTIONS PRESENTED

1. Whether the district court plainly erred by admitting the Serenity House discharge summary and hearsay testimony concerning statements made by treatment staff.
2. Whether the hearsay evidence bore sufficient indicia of reliability and whether the court made the required finding of good cause for dispensing with defendant's confrontation right.
3. Whether admission of the hearsay evidence was harmless or affected the finding that defendant's probation violation was willful.

HOLDINGS

1. Because defendant did not object when the hearsay testimony and discharge summary were offered, the objection was not preserved; however, plain-error review was appropriate because the claim implicated important constitutional rights and the validity of the probation-revocation proceeding.
2. Hearsay is not categorically inadmissible in a probation-revocation proceeding, but before admitting hearsay in lieu of live testimony the trial court must explicitly determine, and state on the record, whether good cause exists to dispense with the probationer's confrontation right.
3. The discharge summary and the probation officer's testimony about statements by Serenity House staff lacked sufficient indicia of reliability because they were uncorroborated, consisted primarily of subjective conclusions rather than objective facts, and lacked specific factual detail.
4. The erroneous admission of the hearsay was not harmless and constituted plain error because the evidence was critical to the disputed issue of whether defendant's failure to complete treatment was willful and the district court relied on it in finding a probation violation and revoking probation.

KEY QUOTATIONS

"a trial court must make an explicit finding, and must state its reasons on the record, whether there is good cause for dispensing with the probationer's confrontation right and admitting hearsay into evidence." (439-440)

"Although we have not explicitly outlined the elements of good cause, we made clear in Austin that the reliability of the evidence is a key factor." (440)

"Vacated and remanded for a new hearing." (444)

FACTUAL BACKGROUND

Defendant was placed on probation under a global plea agreement and required to attend, participate in, and complete a residential treatment program to the satisfaction of his probation officer. He entered Serenity House but was discharged ten days later for alleged inappropriate language, threatening behavior, derogatory remarks, and failure to follow staff directives. At the probation-violation hearing, the State introduced a discharge summary and elicited testimony from defendant's probation officer about statements made by Serenity House staff, while the caseworker and other staff did not testify. Defendant denied threatening anyone and maintained that his discharge resulted from circumstances beyond his control.

PROCEDURAL HISTORY

After entering a global plea agreement, defendant was placed on probation and required to complete a residential treatment program. Serenity House discharged him after ten days, and the district court later found that his failure to complete treatment was willful, revoked probation, and imposed the underlying sentence. The Vermont Supreme Court held that the trial court plainly erred by admitting unreliable hearsay and the discharge summary without adequately addressing the confrontation right, and vacated and remanded for a new hearing.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Remanded for a new probation-violation hearing.

CASES CITED

- State v. Klunder, 2005 VT 130, ¶ 7, 179 Vt. 563, 892 A.2d 927 (mem.)
- State v. Austin, 165 Vt. 389, 396-98, 685 A.2d 1076, 1081-82 (1996)
- State v. Kinney, 171 Vt. 239, 253, 762 A.2d 833, 844 (2000)
- Pope v. Town of Windsor, 140 Vt. 283, 286, 438 A.2d 388, 390 (1981)
- State v. Brunet, 174 Vt. 135, 141, 806 A.2d 1007, 1011 (2002)
- State v. Leggett, 167 Vt. 438, 440-41, 444, 446, 709 A.2d 491, 492-93, 495-96 (1997)
- State v. Ayers, 148 Vt. 421, 426, 535 A.2d 330, 333 (1987)
- Morrissey v. Brewer, 408 U.S. 471, 489 (1972)
- Gagnon v. Scarpelli, 411 U.S. 778, 782, 786 (1973)
- Watker v. Vt. Parole Bd., 157 Vt. 72, 74, 77, 596 A.2d 1277, 1279-80 (1991)
- State v. Finch, 153 Vt. 216, 218, 569 A.2d 494, 495 (1989)
- Bailey v. State, 612 A.2d 288, 293-95 (Md. 1992)
- United States v. Taveras, 380 F.3d 532, 537-38 (1st Cir. 2004)
- United States v. Bell, 785 F.2d 640, 643-44 (8th Cir. 1986)
- Egerstaffer v. Israel, 726 F.2d 1231, 1235 (7th Cir. 1984)
- Mason v. State, 631 P.2d 1051, 1055, 1057 (Wyo. 1981)
- United States v. Comito, 177 F.3d 1166, 1171 (9th Cir. 1999)