

SUPREME COURT OF VERMONT

In re Mark Jankowski

2016 VT 112, 203 Vt. 418 (2016) · No. 2015-194 · Decided October 14, 2016

SUMMARY

The Vermont Supreme Court held that the petitioner was entitled to post-conviction relief overturning his probation revocation. The court concluded that a probationer has due process rights during the disposition phase of a probation-revocation proceeding, including the opportunity to contest revocation and present mitigating evidence. It further held that any waiver of those rights and of the right to appeal must be knowing, voluntary, and intelligent, and remanded for a new revocation determination and sentencing hearing if necessary.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Dooley, J.; Skoglund, J.; Robinson, J.; Eaton, J.; Bent, Supr. J., specially assigned
JURISDICTION	Vermont
DECIDED	October 14, 2016
DOCKET	2015-194
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from denial of a petition for post-conviction relief challenging the validity of a probation revocation, the absence of a revocation-disposition hearing, the alleged waiver of due process and appellate rights, and the sentence imposed after revocation.
STANDARD OF REVIEW	De novo, using the same standard as the trial court; summary judgment is proper when there is no dispute of material fact and a party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential.
PARTIES	Mark Jankowski v. State of Vermont

TOPICS

- state post-conviction relief
- probation
- due process
- sentencing
- appellate procedure

PRACTICE AREAS

criminal procedure

post-conviction relief

probation

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether due process and Vermont Rule of Criminal Procedure 32.1 require a probationer to receive an opportunity to contest whether probation should be revoked after a violation has been found.
2. Whether a waiver of the right to contest revocation, present mitigation, accept a sentence, and appeal was knowing, voluntary, and intelligent when it was communicated only by counsel and the defendant was not personally addressed.
3. Whether the trial court had statutory authority under 28 V.S.A. § 304 to revoke probation and impose a different sentence from the original sentence.

HOLDINGS

1. A probationer's due process and rule-based procedural rights continue through the revocation decision; after a violation is found, the probationer must have an opportunity to contest revocation and present mitigating arguments or evidence concerning whether revocation is warranted.
2. A waiver of the right to contest revocation and present mitigation must be knowing, voluntary, and intelligent. The record did not establish such a waiver where counsel reported an agreement after a brief recess, the defendant was not personally addressed, and the defendant never spoke.
3. After a probation violation is established, 28 V.S.A. § 304 does not authorize the court to revoke probation and impose an entirely different sentence from the sentence originally imposed. The court may select only the statutory options authorized by the Legislature.

KEY QUOTATIONS

“Where such discretion [with respect to revocation] exists, however, the parolee or probationer is entitled to an opportunity to show not only that he did not violate the conditions, but also that there was a justifiable excuse for any violation or that revocation is not the appropriate disposition.” (203 Vt. at 425)

“The options do not include the one attempted to be exercised here, revocation of probation and imposition of a different sentence from that imposed originally.” (203 Vt. at 435)

FACTUAL BACKGROUND

Jankowski pleaded guilty to sexual assault on a child and received a partially suspended five-to-twenty-year sentence and probation. After a contested evidentiary hearing, the trial court found that he violated a probation condition but did not immediately determine whether probation should be revoked. At a later hearing, counsel reported an agreement to revoke probation, impose a new four-to-twenty-year sentence, credit time served, and waive appellate challenges, although Jankowski was not personally addressed and did not speak.

PROCEDURAL HISTORY

Jankowski pleaded guilty to sexual assault on a child in 2010 and received a five-to-twenty-year sentence, suspended except for three years to serve, plus probation. After a contested violation-of-probation merits hearing, the trial court found a violation and later accepted an agreement presented by counsel that revoked probation, imposed a new four-to-twenty-year sentence, credited time served, and purportedly waived appellate rights. The PCR court granted summary judgment to the State, concluding that the merits hearing satisfied Jankowski's rights. The Vermont Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Grant post-conviction relief overturning the probation revocation. Conduct a new determination of whether probation should be revoked, and conduct a new sentencing hearing if probation is revoked.

CASES CITED

- In re Carter, 2004 VT 21, ¶ 6, 176 Vt. 322, 848 A.2d 281
- Morrissey v. Brewer, 408 U.S. 471 (1972)
- Gagnon v. Scarpelli, 411 U.S. 778 (1973)
- Black v. Romano, 471 U.S. 606 (1985)
- State v. Talton, 737 P.2d 409 (Ariz. Ct. App. 1987)
- State v. Montoya, 596 P.2d 527 (N.M. Ct. App. 1979)
- Brown v. United States, 900 A.2d 184 (D.C. 2006)
- State v. Germaine, 152 Vt. 106, 564 A.2d 604 (1989)
- State v. Duffy, 151 Vt. 473, 562 A.2d 1036 (1989)
- Strickland v. Washington, 466 U.S. 668, 688 (1984)
- Hersch v. State, 562 A.2d 1254 (Md. 1989)
- Howlett v. State, 456 A.2d 375 (Md. 1983)
- United States v. LeBlanc, 175 F.3d 511 (7th Cir. 1999)
- United States v. Pelensky, 129 F.3d 63 (2d Cir. 1997)
- United States v. Stocks, 104 F.3d 308 (9th Cir. 1997)
- Jones v. Barnes, 463 U.S. 745, 751 (1983)
- State v. Tribble, 2012 VT 105, ¶ 54, 193 Vt. 194, 67 A.3d 210
- Gonzalez v. United States, 553 U.S. 242, 250 (2008)
- State v. Machia, 155 Vt. 192, 200, 585 A.2d 556, 560 (1990)
- State v. Buck, 139 Vt. 310, 428 A.2d 1090 (1981)
- State v. Hance, 157 Vt. 222, 224, 596 A.2d 365, 366 (1991)
- State v. Pratt, 173 Vt. 562, 795 A.2d 1148 (2002) (mem.)

- State v. Therrien, 140 Vt. 625, 627-28, 442 A.2d 1299, 1301 (1982)
- United States v. Correa-Torres, 326 F.3d 18, 23-24 (1st Cir. 2003)

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