1984 WL 250008 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
November 14, 1984

***1** The Honorable David H. Maring
Chief Judge
The Family Court of the 15th Judicial Circuit
Post Office Box 806
Georgetown, South Carolina 29440

Dear Judge Maring:
In a letter to this Office you questioned the procedure to be followed in revoking the probation of juveniles who have been convicted of criminal or status offenses. You also questioned whether in such circumstances the burden of proof is the preponderance of evidence or proof beyond a reasonable doubt.

I am unaware of any statutes or case law in this State which are directly responsive to the questions referenced above. Generally, the State Supreme Court has recognized that the family court is granted broad discretion in imposing conditions of probation on juveniles. See: In the Matter of Westbrooks, 277 S.C. 410, 288 S.E.2d 396 (1982). However, I am unaware of any decisions by the Court which comment on the procedural requirements due a juvenile in a probation revocation proceeding. Nevertheless, in the following paragraphs, I have outlined decisions by several courts which I feel should be beneficial to you and which provide some insight as to how the matters addressed in your letter are viewed generally.

In Morrissey v. Brewer, 408 U.S. 471 (1972), the United States Supreme Court addressed the question of what due process rights must be afforded an adult offender in a parole revocation hearing. Indicating no difference between the revocation of parole and the revocation of probation, the Supreme Court in Gagnon v. Scarpelli, 411 U.S. 778 (1973) extended the same due process rights determined relevant in parole revocation proceedings to probation revocation proceedings.

In Morrissey, the Court had stated:
'(w)e begin with the proposition that the revocation of parole is not a part of the criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations.' 408 U.S. at 480.

The Court further stated that:
'. . . due process is flexible and calls for such procedural protections as the particular situation demands . . .. Its flexibility is in its scope once it has been determined that some process is due; it is a recognition that not all situations calling for procedural safeguards call for the same kind of procedure.' 408 U.S. at 481.

The 'flexible' standard referenced above was again recognized in Gagnon where the Supreme Court specifically determined that any right to counsel in a probation revocation proceeding should be considered in light of the complexity of the issues involved.

In Gagnon, the Supreme Court determined that due process, while flexible, did require that a probationer be granted the same preliminary and final revocation hearings specified in Morrissey v. Brewer for parolees. Under Morrissey, the preliminary hearing was defined as a hearing at the time of arrest and detention to determine the existence of probable cause to believe that the accused has violated his parole. It was established that such hearing must be held by an independent officer as promptly as

convenient after arrest. See: 408 U.S. at 485-486. In Morrissey, the Court also established a list of minimum requirements of due process which must be provided in a final parole revocation hearing. Such are:

***2** '. . . (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the the hearing officer specifically finds good cause for not allowing confrontation;) (e) a neutral and detached' hearing body . . .; and (f) a written statement by the fact finders as to the evidence relied on and reasons for revoking parole.' 408 U.S. at 489.

In Gagnon, the Court made the same finding as to probation revocations. See: 411 U.S. at 786.

In keeping with the 'flexible' standard referenced above, the South Carolina Supreme Court in State v. Franks, 276 S.C. 636, 281 S.E.2d 227 (1981), similarly recognized that a probation revocation proceeding:

'. . . is not a criminal trial of those charges . . . but a more informal proceeding with respect to notice and proof of the alleged violations.' 276 S.C. at 638.

As a result, the Court similarly concluded that rights of an offender in a probation revocation proceeding are not the same as those guaranteed in his trial upon the original offense.

As to juveniles, the United States Supreme Court has recognized that constitutional rights of juveniles cannot be ignored. Instead, juveniles must be afforded due process and fair treatment. See: Breed v. Jones, 421 U.S. 519 (1975); In re Winship, 397 U.S. 358 (1970); In re Gault, 387 U.S. 1 (1967).

In State ex rel. J. R. v. MacQueen, 259 S.E.2d 420 (1979), the West Virginia Supreme Court of Appeals cited the conclusions of the United States Supreme Court in Morrissey v. Brewer referenced above concerning parole revocation proceedings for adult offenders and stated that they found '. . . no reason why the same due process rights should not apply to juvenile parole revocations.' 259 S.E.2d at 422. In its decision, the Court referenced decisions of other jurisdictions which established that juveniles are entitled to certain minimum procedural due process rights in parole revocation proceedings. [1] Similarly, in State ex rel. E.K.C. By D.C. v. Daugherty, 298 S.E.2d 834 (1982), the West Virginia Supreme Court of Appeals referenced the procedural guidelines for parole and probation revocation hearings established by the Supreme Court in Gagnon and Morrissey and stated:

'(w)e . . . hold that the nature of the interest of the juvenile probationer is no less valuable than that of an adult probationer. A juvenile being subjected to probation revocation must be afforded all the constitutional protections afforded an adult in a probation revocation proceeding.' 298 S.E.2d at 836.

You also questioned the burden of proof as to a juvenile probation revocation proceeding. Again, I am unaware of any case law or statute in this State responsive to your question. As referenced, in Morrissey, the Supreme Court distinguished the parole revocation procedure from a criminal prosecution. In so doing, the Court stated:

***3** '(t)he State has an overwhelming interest in being able to return the individual to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole . . . What is needed is an informal hearing . . . We emphasize there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense.' 408 U.S. at 483, 484, 489.

Similarly, in State v. Franks, the State Supreme Court stated that a probation revocation proceeding is distinguishable from a criminal trial. The Court further determined that it is also:

'. . . a more informal proceeding with respect to notice and proof of the alleged violations.' 276 S.C. at 638.

Referencing such, it appears that the standard used in criminal trials of proof beyond a reasonable doubt is not necessary.

Also, the Franks case cited the earlier decision of the State Supreme Court in State v. White, 218 S.C. 130, 61 S.E.2d 754 (1950). In such case, the Court stated:
'(t)he general principles of the law relating to the revocation of paroles, and hearings thereon, are established . . . and although this case related to the revocation of a suspended sentence, rather than a suspended sentence accompanied by parole the rule is practically identical . . .. The nature of the inquiry and extent of the investigation to be conducted by the court of general sessions in determining whether the condition of a suspended sentence has been violated are matters that rest in the sound discretion of that court . . .. If follows that the authority of the court of general sessions to revoke such suspension of sentence may not be capriciously or arbitrarily exercised, but should always be predicated upon an evidentiary showing of fact tending to establish violation of the conditions.' 218 S.C. 130 at 134-135. See also: State v. Clough, 220 S.C. 390, 68 S.E.2d 329 (1951).

As to juvenile revocation proceedings, various jurisdictions have required different burdens of proof. See: State ex rel. J.R. v. MacQueen, 259 S.E.2d 423 (1979) (W.Va.) ('clear and convincing proof of substantial violation'); People In Interest of C.B., 585 P.2d 281 (1978) (Colo.) ('proof beyond a reasonable doubt'); In re Sneed, 381 N.E.2d 272 (1978) (Ill.) ('preponderance of evidence'); In re Welfare of Ames, 554 P.2d 1084 (1976) (Wash.) (State 'need only present evidence which reasonably satisfies the court'); In the Matter of T.L.W., 578 P.2d 360 (1978) (Okl.) ('preponderance of evidence'). In several instances, the burden of proof to be established has been specifically set forth by statute.

Hopefully the above will be of benefit to you. Obviously this is a matter which could benefit from statutory clarification. If there are any questions concerning the above, please contact me.
Sincerely,

Charles H. Richardson
Assistant Attorney General

Footnotes

1 See: Morgan v. MacLaren School, 543 P.2d 304 (1975) (Ore.); State ex rel. R.P. v. Schmidt, 216 N.W.2d 18 (1974) (Wis.); People ex rel. Silbert v. Cohen, 271 N.E.2d 908 (1971) (N.Y.); State ex rel. D.E. v. Keller, 251 So.2d 703 (1971) (Fla.).

1984 WL 250008 (S.C.A.G.)

End of Document