

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

1 THE CIRCLE, SUITE 2
COURTHOUSE
GEORGETOWN, DE 19947

January 29, 2003

Jack D. Gibbs
Delaware Correctional Center
P.O. Box 500
Smyrna, DE 19977

RE: State of Delaware v. Jack D. Gibbs
Def. ID# 92S05475DI

Memorandum Opinion - Motion for Postconviction Relief

Dear Mr. Gibbs:

This is my decision on your motion for postconviction relief. You were before me on an alleged violation of your probation.¹ A hearing was held on October 12, 2001. At the conclusion of the hearing, I found that you had violated your probation and I resentenced you to a total of three years and 11 months at supervision level V.

You filed your motion for postconviction relief on October 22, 2002. You set forth two grounds for relief. One, you argue that it was error for me to consider the results of your blood test without requiring the person who performed the test to testify. Two, you argue that I should

¹Gibbs was sentenced on April 20, 2001 to three years at supervision level V, suspended for 30 days at supervision level V, followed by one year at supervision level III on the charge of Assault in the First Degree, and one year at supervision level V, suspended for one year at supervision level II on the charge of Conspiracy in the First Degree.

have appointed an attorney to represent you. You took no direct appeal to the Supreme Court. This is your first motion for postconviction relief and it was filed in a timely manner. Therefore, there are no procedural bars to your motion for postconviction relief.²

I. Hearsay. You argue that it was error for me to allow into evidence the results of a blood test showing that you had marijuana and cocaine in your system without requiring the person who performed the test to testify. Whether or not it was error is irrelevant because I did not rely on the test to find that you violated your probation. I merely read the report and asked you if you had been using marijuana and cocaine. You admitted to using marijuana, but denied that you had used cocaine. I relied on your admission that you had used marijuana to, in part, find you in violation of your probation. I did not rely on the test to conclude that you had also used cocaine. I would note, however, that you admitted that you had possessed cocaine, which would also be a violation of your probation. In addition to admitting to using marijuana, you admitted that you did not comply with your other conditions of your probation by (1) not reporting to your probation officer when directed to do so, (2) not reporting the various contacts that you had with the police to your probation officer, and (3) not reporting a change in address to your probation officer. I relied, in part, on these admissions to find you in violation of your probation. I note that you did not challenge any of these other reasons in your motion for postconviction relief.

II. Counsel. You also argue that I should have appointed an attorney to represent you at the violation of probation hearing. First, you never requested that I appoint an attorney for you. You were told in a letter, dated September 26, 2001, that if you wanted to have an attorney

²Younger v. State, 580 A.2d 552, 554 (Del. 1990).

present to represent you, that you needed to make arrangements to have one present. You never did this and you never asked me to appoint an attorney for you. Thus, you have waived this argument. Second, you do not have an absolute right to have an attorney represent you at State expense. The allegations against you were very simple. As such, you had no right to have an attorney appointed for you.³ Moreover, you admitted to most of the violations. Thus, there was no actual need for me to appoint an attorney for you.

For the reasons set forth above, your motion for postconviction relief is denied.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

ESB:tl

cc: Prothonotary's Office

³Jones v. State, 560 A.2d 1056, 1057 (Del. 1989).