Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-155

SEPTEMBER TERM, 2002

State of Vermont	APPEALED FROM:
	District Court of Vermont, Unit No. 2, Bennington Circuit
v.	DOCKET NOS. 641-5-99; 525-5-99;
Mitchell Hunt	1206-8-99; 1323-9-99; 908-6-00 Bncr
	Trial Judge: David Howard

In the above-entitled cause, the Clerk will enter:

Defendant appeals from a district court judgment revoking his probation. Defendant contends that he was not given reasonable notice that participation in the Cognitive Self-change Program while incarcerated was a condition of probation, or that failure to complete the program would result in a violation. We affirm.

For a variety of offenses including simple assault and contempt, defendant was given a bargained-for sentence of one to three years, with one year to serve and the balance on probation. A condition of probation required that defendant " Complete Violent Offenders Program," with the stated understanding that he would begin with the incarcerative phase. Defendant signed the probation warrant, indicating that he had read and understood the conditions. He was informed about the violent offender' s program at the prison, which is known as the Cognitive Self-change Program, or CSC, and was admitted to the program. The program supervisor testified at the Violation of Probation hearing, or VOP, that defendant did not do well in the program, and that he was informed on several occasions by program personnel that a failure to complete the program might result in a violation of probation. He was told that several other prisoners who had failed to complete the program had had their probations violated. Defendant' s performance did not improve and he was removed from the program. As a result, he was charged with a violation of the probation condition that he complete the violent offender' s program.

Defendant claimed at the VOP hearing that he had not been given adequate notice that participation in the CSC program was a condition of probation, or that a failure to complete the program could result in a violation. The court rejected the claim, finding that there was no misunderstanding or confusion resulting from the difference between the titles " violent offender program" and " Cognitive Self-change Program." The court noted that defendant was immediately informed about the CSC program when he signed the probation warrant, and was told of the requirement that he complete the program. The court further noted that defendant was clearly informed by program personnel that a failure to complete the program might result in a violation of his probation, and that this had occurred with other prisoners. The court also distinguished this Court' s recent decision in State v. Hammond, 172 Vt. 601, 603 (2001), where we held that the defendant had not been given adequate notice where the probation condition required that he participate in sex offender counseling, and he was admitted instead to the CSC program. As the court here explained: " Unlike in Hammond where the switch in programs was from a sex offender one to a totally different one due to the probationer' s ineligibility for the first program, here the defendant understood the CSC program was the violent offender program he had bargained for." Accordingly, the court found that defendant had violated probation as charged. This appeal followed.

Defendant renews his claim on appeal that he was not given adequate notice that participation in the CSC program was

a condition of probation or that failure to complete the program could result in a violation. Due process requires that a defendant be adequately informed of the conduct that is required before the initiation of a probation revocation proceeding. Id. at 602. Here, however, the court found, and the record shows, that there was no demonstrated confusion about the fact that defendant' s participation in the CSC program was required by the condition that he complete a violent offenders program. See State v. Masse, 164 Vt. 630, 632 (1995) (court' s findings in probation revocation proceeding must be upheld unless clearly erroneous). The record also supports the court' s finding, despite defendant' s claims to the contrary, that program personnel clearly informed him that a failure to complete the program could " at the discretion of the probation officer " result in a VOP charge. See id. The trial court also properly distinguished Hammond, which involved a blatant discrepancy between the probation condition involving sex-offender counseling and the CSC program to which the defendant was actually admitted. Accordingly, we discern no basis to disturb the judgment.

Affirmed.

BY THE COURT:

_____

Jeffrey L. Amestoy, Chief Justice

_____

Denise R. Johnson, Associate Justice

_____

Marilyn S. Skoglund, Associate Justice