Buffalo Law Review

Volume 3 | Number 1 Article 37

12-1-1953

Criminal Law—Violation of Condition of Probation

Myron Siegel

on the ground that in the prior case there was reliance on the bond, by an innocent third party plaintiff.

It appears that New York is now in accord with the generally recognized principle that a bail bond or recognizance taken without authority is void and cannot be enforced against either principal or surety.

Violation of Condition of Probation

A probationer charged with violating a condition of his probation, is provided by statute[56] with an "opportunity to be heard", before possible imposition of his original suspended sentence. The meaning of the phrase, in regard to the procedural safeguards it affords a probation violater, was expressed for the first time by the Court of Appeals in *People v. Oskroba.*[57] Both the majority and dissent agree that the probationer should be provided with at least a right to notice of the conditions allegedly violated, and an opportunity to attack or deny the charge.[58]

The disparity in the opinions relates to whether the safeguards provided were afforded probationer in the instant circumstances. At the hearing, defendant failed to refute the charge of which he had been notified, but extraneous material concerning violations not previously charged were admitted by witnesses. Probationer's request for an adjournment to bring in a witness to refute these accusations was denied. The majority found that denial of the adjournment was a matter of discretion and as such was not a denial of Oskroba's "opportunity to be heard". The dissent believed that a failure to allow a probationer time to defend against new matter, brought out for the first time at the hearing was a denial of procedural due process.

It is unfortunate that the procedural safeguards provided by the phrase were not more precisely defined. However, the general procedural requirements of notice and an opportunity to attack the charge, give the probationer a fair degree of protection, and provide the lower courts with an adequate guide to follow in future determinations.

---

56. CODE CRIM. PROC. § 935 provides: "Whenever within the period of probation any probationer shall violate his probation, the court may issue a warrant for his arrest and may commit him without bail. On his being arraigned and after an opportunity to be heard the court may revoke, continue or modify his probation. If revoked, the court may impose any sentence it may have originally imposed."

57. 305 N. Y. 113, 111 N. E. 2d 235 (1953).

58. See *People* ex rel *Benacquista v. Blanchard,* 267 App. Div. 663, 48 N. Y. S. 2d 22 (3d Dep't 1944); *People v. Hill,* 164 Misc. 370, 300 N. Y. Supp. 532 (Co. Ct. 1937).