PROBATION

PROBATION VIOLATION/VIOLENT OR THREATENING BEHAVIOR

State v. Gilbert, 2009 VT 7.

Appellant challenged whether mere utterances without any accompanying conduct is sufficient to constitute threatening behavior so as to be found in violation of probation condition M, prohibiting "[v]iolent or threatening behavior." Appellant further argued that curfew violations were de minimus and did not alone support probation revocation. The Court declined to reach the merits of this argument, finding the matter unpreserved for review. The Court held that because the question whether verbal threats constitute threatening behavior in a probation context has not been decided yet by the Court, it was not appropriate for review under plain error. Affirmed.

MURDER/INSANITY/PLEA

State v. Butson, 2008 VT 134.

A plea to two counts of second degree murder arising out of a love triangle in the NEK. The Court rejects the defense claim that Provost applied because it was not plain error and counsel failed to object. Also rejected was the claim that he never waived the insanity defense. In State v. Brown, 2005 104, has required that a waiver of the insanity defense once raised must be made by the defendant on the record. Here, the defendant mentioned that he might present an insanity defense, but never actually filed notice, so no specific waiver colloquy was required. Affirmed.

PROBATION/FINGERPRINTING/20 VSA § 2061(e)

State v. Stell, 2007 VT 106

In Bennington, Judge Suntag issued separate orders for defendants to appear for fingerprinting. The prosecutor charged the defendant with contempt of court for failing to report for fingerprinting after conviction. Then they also charged him with a VOP for getting charged with a new offense. The Court reverses- the statute directs the court to order the defendant to submit to fingerprinting as a condition of probation and there is no statutory authority for Suntag's orders. The state doesn't get to make two charges out of one VOP.

PROBATION/REVOCATION/HEARSAY

State v. Decoteau, 2007 VT 94

The Court holds that the trial court committed plain error in admitting a hearsay discharge summary from Serenity House and hearsay from caseworker to the P.O about why defendant was discharged from Serenity House. The Court finds that three factors are important in deciding whether hearsay is sufficiently reliable to admit in a probation revocation hearing. First is the whether the hearsay is corroborated by non-hearsay evidence. Second is whether the hearsay contains an objective fact rather than conclusions which should be tested by cross-examination. Third, whether the hearsay contains a greater level of specific detail. Here, there was no corroboration, it was mostly conclusory statements and inferences, and the hearsay was mainly general statements not specific facts. The defendant was kicked out of Serenity House because of an alleged bad attitude, making inappropriate remarks to female residents and an alleged threat to another resident. The defendant testified and had a witness also testify that he made no threats.