

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

JB New York

STATE OF MAINE

Inter-Departmental Memorandum Date 18 June 1971

To William Kimball, Assistant Director

Dept. Division of Probation and Parole
[Mental Health and Corrections]

From Courtland D. Perry, Assistant Attorney Genl.

Dept. Mental Health and Corrections

Subject Appeal from Revocation of Probation

SYLLABUS:

An appeal lies from the District Court's revocation-of-probation when not accompanied by imposition of sentence, such proceeding being "sui generis" and not a part of the criminal trial.

FACTS:

Subject was tried in the District Court, was found guilty of the criminal offense charged, was sentenced to a six months term of imprisonment in the County Jail, sentence was suspended and subject was placed on probation for a period of two years. No appeal was taken from this District Court criminal proceeding within the probation period. A probation violation report was filed, subject was brought before the District Court, was found in violation of probation, probation was revoked and subject was ordered in execution of the originally imposed sentence. Subject took an appeal from the District Court's revocation of his probation.

QUESTION:

Does an appeal lie from the District Court's revocation-of-probation when a Defendant has been tried, convicted, sentenced, and sentence is suspended, and he is placed on probation, and no timely appeal is taken from the original criminal proceeding?

ANSWER:

Yes.

REASON:

Recently, the Law Court in Dow vs. State of Maine, et al., 275 A.2d 815 Me. (1971) has held that direct appeal to the Law Court lies from a Superior Court revocation-of-

18 June 1971

- 2 -

probation without accompanying imposition of sentence and in connection therewith spoke as follows:

"...An order and judgment of the Superior Court revoking probation, when not accompanied by imposition of sentence..... is a final order and judgment of the Court. It represents a judicial conclusion upon the issues presented, whether the probationer has violated the terms and conditions of his probation. It settles the controversy after the charges have been proffered and the probationer given the opportunity to defend against them. Although not a criminal case, the revocation of probation proceeding may be likened to any other civil action tried by the court without a jury....."

".....the appropriate method to test the legal propriety of Superior Court judgments respecting violation of probation is by appeal. Although "'sui generis'" in nature and not a criminal trial, the proceeding as previously stated may be likened to a civil proceeding before a justice without a jury, with the same logic with which a contempt proceeding may be viewed as a criminal proceeding. A probationer by appeal may raise the issue, whether the court's finding of violation of probation was made in the exercise of a sound judicial discretion from the evidence before it or whether it was the result of whim or caprice...."

Although, the Dow case decides the issue of the appealability of a probation-revocation order in the Superior Court and, although, the Law Court has not decided specifically the appealability of a probation-revocation order, in the District Court, we are brought to the conclusion that, in view of the "'sui generis'" nature of the proceeding, and the fact that, although, without a specific appeal statute the Law Court has ruled that there is an appeal from a probation-revocation order in the Superior Court, the same reasoning must be applied in instances of District Court probation-revocation.

In view of the holding in Dow we are unable to set forth a cogent argument for the

William Kimball, Asst. Director
Division of Probation & Parole

18 June 1971

- 3 -

non-appealability of a District Court probation-revocation order.

It appears that District Court probation-revocation when not accompanied by imposition of sentence, being a proceeding apart from the criminal trial, Rule 73 of the District Court Civil Rules would apply. The appeal in such case would not give rise to a trial de novo in the Superior Court as would be the case in instances of appeal in a District Court criminal case. The appeal under such Rule would be to seek reversal of the District Court probation-revocation order on the ground of abuse of judicial discretion. The appeal to the Superior Court for such purpose would be analogous to the appeal from the Superior Court order revoking probation to the Maine Supreme Judicial Court sitting as the Law Court.



Courtland D. Perry
Assistant Attorney General

CDP/f