

[REDACTED]

the record, we will vacate that part of the trial court's order and allow the trial judge to reconsider this issue.

Reversed in part; remanded.

All concurred.

[REDACTED]

Cheshire
No. 81-288

THE STATE OF NEW HAMPSHIRE

v.

CHARLES S. BRACKETT

August 6, 1982

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

a probationer violates the conditions of his probation, the court may make such "orders" as justice requires. See RSA 504:4 (Supp. 1979). We find no other statutory source of a right of appeal. Cf. *Martel v. Hancock*, 115 N.H. 237, 238, 339 A.2d 9, 11 (1975) (no appeal procedure from decision of State parole board).

■ In addition, this court has previously refused to grant a right of appeal in a similar factual situation. In *Philpot v. State*, 65 N.H. 250, 20 A. 955 (1899), the plaintiff's sentence for selling "spirituous liquors" was suspended on condition that he stop selling liquor. The plaintiff violated this condition by continuing to sell liquor; as a consequence, he was confined to the county jail. This court held that the plaintiff was not entitled to "any process equivalent to an appeal." *Id.* at 250, 20 A. at 955. The defendant contends that *Philpot* is no longer the law because in *Martel v. Hancock*, 115 N.H. 237, 339 A.2d 9 (1975), this court recognized that parolees are entitled to certain constitutional due process protections. See *id.* at 238-39, 339 A.2d at 11 (applying due process safeguards established by *Morrissey v. Brewer*, 408 U.S. at 488-89 and *Gagnon v. Scarpelli*, 411 U.S. 778, 786 (1973)); see also *State v. Aubert*, 118 N.H. 739, 740-41, 393 A.2d 567, 568 (1978). Our decision is made with these cases in mind. In finding no right to appeal to superior court, we do not minimize the important liberty interests at stake in probation revocation proceedings or limit the due process protections we have previously granted to parolees.

■ We conclude that a petition for writ of certiorari in superior court is the appropriate method for review of probation revocation proceedings. The test on a petition for writ of certiorari is whether the court acted "illegally in respect to jurisdiction, authority or observance of the law . . . or has abused its discretion or acted arbitrarily or capriciously." *Petition of Gorham School Board*, 121 N.H. 878, 880, 436 A.2d 74, 76 (1981) (quoting *Wilson v. State Personnel Comm'n*, 118 N.H. 424, 425, 387 A.2d 1160, 1161 (1978) (citation omitted)). Although a writ of certiorari will only be granted by the superior court in extraordinary circumstances, a writ will issue when the "substantial ends of justice" so require. *George v. Commercial Credit Corp.*, 105 N.H. 269, 271, 197 A.2d 212, 214 (1964); see *Hardy v. State*, 122 N.H. 587, 448 A.2d 382 (1982); *Petition of Gorham School Board*, 121 N.H. at 880, 436 A.2d at 76. This procedure adequately protects individuals' rights when their probation has been revoked.

[REDACTED]

This matter is remanded to the superior court with instructions that in this instance the appeal is to be treated as a petition for a writ of certiorari.

Remanded.

All concurred.

[REDACTED]

Strafford
No. 81-301

DIANE M. ESTLOW

v.

NEW HAMPSHIRE SWEEPSTAKES COMMISSION

August 6, 1982

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Fisher, Moran, Willoughby, Clancy & White, of Dover (*Stephen A. White* on the brief, and *Edward T. Clancy* orally), for the plaintiff.

Gregory H. Smith, attorney general (*Loretta S. Platt*, attorney, on the brief and orally), for the State.

BATCHELDER, J. Diane M. Estlow, a ticket agent for the New Hampshire Sweepstakes Commission since March 1977, purchased a sweepstakes ticket on September 26, 1977. The particular ticket in question contained a joker prize in the bingo instant sweepstakes