IN THE COURT OF APPEALS OF THE STATE OF ALASKA

MATTHEW AARON CROSS, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-11777 Trial Court No. 3PA-13-101 CR MEMORANDUM OPINION No. 6149 — February 25, 2015

Appeal from the Superior Court, Third Judicial District, Palmer, Vanessa White, Judge.

Appearances: James Alan Wendt, Law Offices of James Alan Wendt, Anchorage, for the Appellant. Trina Sears, Assistant District Attorney, Palmer, and Michael C. Geraghty, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Hanley, District Court Judge.[*]

Judge HANLEY.

Matthew Aaron Cross pleaded guilty to second-degree sexual abuse of a minor for engaging in sexual contact with a young boy. He now appeals one aspect of his sentence: a condition of his probation that limits his contact with minors, including

[*] Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

his own children. In addition, Cross argues that the superior court violated Alaska Criminal Rule 32.1(f)(5) by failing to strike certain contested allegations of misconduct from his presentence report.

For the reasons explained here, we direct the superior court to reconsider the probation condition, and we direct the superior court to prepare a redacted presentence report as required by Rule 32.1(f)(5).

The challenged probation condition

One of Cross' conditions of probation forbids him from knowingly having contact with any minor unless he is in the presence of another adult who knows the circumstances of Cross' crime and who has been approved in advance by Cross' probation officer.

Cross objected that this condition of probation would improperly restrict his contact with his own two sons, but the sentencing court overruled Cross' objection. The court stated that this restriction was needed because the court doubted that Cross' wife would be effective in protecting the two boys from Cross. The court also noted that the prohibition was not absolute — that Cross could still have contact with his sons if his probation officer authorized it and if "adequate protections [were] put into place."

As this Court has explained in prior cases, a probation condition that restricts a defendant's family associations is subject to special scrutiny.[1] Thus, the court "was obligated to affirmatively consider[,] and have good reason for rejecting[,] lesser restrictions."[2]

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[1] *Diorec v. State*, 295 P.3d 409, 414 (Alaska App. 2013).

[2] *Peratrovich v. State*, 903 P.2d 1071, 1079 (Alaska App. 1995) (citing *Dawson v. State*, 894 P.2d 672, 680-81 (Alaska App. 1995)).

We have reviewed the sentencing record in this case, and we are unable to determine whether the sentencing court engaged in this type of analysis before imposing the challenged condition of probation. We therefore direct the superior court to reconsider this probation condition under the correct legal standard.

Redaction of the presentence report

At his sentencing, Cross objected to certain allegations of misconduct that were included in his presentence report. When the State did not oppose striking these allegations from the report, the sentencing judge declared that these allegations "shall be considered redacted" from the presentence report, and she told the parties that she would not consider these allegations when formulating Cross' sentence.

When the sentencing court determines that the disputed allegations are not relevant to its sentencing decision, Criminal Rule 32.1(f)(5) directs the court to "delete the assertion[s] from the [presentence] report." The rule then provides that "[a]fter the court has made the necessary deletions and modifications [of the report], the court's corrected copy shall be labeled the 'approved version' of the presentence report," and a copy of this approved version "must be delivered to the Department of Corrections within seven days after sentencing."

In Cross' case, the sentencing court did not follow these procedures. We therefore direct the court to do so.

Conclusion

Cross' case is REMANDED to the superior court with directions to (1) reconsider the challenged probation condition and (2) prepare an amended presentence report as required by Criminal Rule 32.1(f)(5).

With regard to the challenged probation condition, the superior court shall analyze whether, and to what extent, it is necessary to restrict Cross' access to his own children, and why lesser measures would be inadequate. The superior court shall conduct this analysis and furnish this Court with a copy of its written or oral decision within sixty days of the issuance of this opinion.

If the superior court decides not to restrict Cross' access to his own children, the superior court shall simply notify us of its decision.

On the other hand, if the superior court again restricts Cross' access to his children, and if Cross again wishes to contest the probation condition, he shall have thirty days to file a supplemental brief to this Court.

If Cross does not file a brief within thirty days (or within such longer time as this Court may grant), we will close this case. If Cross does file a brief, the State shall then have thirty days to file a responsive brief. No reply brief will be allowed. We will then resume consideration of this aspect of Cross' case. We retain jurisdiction over this appeal.