

NOTICE

Memorandum decisions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

CHRISTOPHER MICHAEL HALL,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals Nos. A-11550 & A-11559
Trial Court Nos. 3AN-07-1849 CR
& 3AN-05-525 CR

MEMORANDUM OPINION

No. 6315 — April 27, 2016

Appeal from the Superior Court, Third Judicial District,
Anchorage, John Suddock, Judge.

Appearances: Tracey Wollenberg, Assistant Public Defender,
and Quinlan Steiner, Public Defender, Anchorage, for the
Appellant. A. James Klugman, Assistant District Attorney,
Anchorage, and Craig W. Richards, Attorney General, Juneau,
for the Appellee.

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

Judge MANNHEIMER.

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

In 2012, Christopher Michael Hall was on probation in two separate criminal cases. One of these cases involved a complex check fraud scheme, while the other one involved forged money orders.

In February 2012, the State petitioned the superior court to revoke Hall's probation in both of these cases; the petition alleged that Hall had driven a motor vehicle while under the influence. (Hall was directly charged with this offense in a separate case, and he ultimately pleaded no contest.)

In April 2012, while this initial petition to revoke was pending, the State filed a supplemental petition alleging that Hall had committed second-degree theft by writing a bad check. (Again, Hall was directly charged with this offense in a separate case, and he ultimately pleaded guilty to a reduced charge of third-degree theft.)

Hall's probation revocation adjudication hearing was held in February 2013. The superior court found that the State had proved its allegations of DUI and second-degree theft.

As part of the Department of Corrections' sentencing recommendation, Hall's probation officer asked the superior court to impose seven new conditions of probation "to address [Hall's] recent decision to consume alcohol to excess and then operate a [motor] vehicle." All seven of these new probation conditions are incorporated in Hall's written judgement — although, based on the superior court's sentencing remarks, it is unclear whether the superior court adopted these seven conditions in their entirety.

In this appeal, Hall challenges four of these new conditions of probation. These four conditions of probation contain various provisions. Some of the provisions relate to Hall's possession and consumption of alcoholic beverages. Other provisions relate to Hall's possession and ingestion of illicit drugs. And some require Hall to

submit to warrantless searches of his person, his residence, his personal property, and any vehicle he might be found in.

The provisions dealing with alcohol

Four of the challenged probation conditions deal with alcohol. One provision bars Hall from using, possessing, consuming, or ingesting alcoholic beverages — as well as prohibiting him from having alcohol “in any of his bodily fluids”. Another provision bars Hall from “frequent[ing] places where alcoholic beverages are the main items for sale.”

Still another provision bars Hall from “resid[ing] in any residence where alcoholic beverages are present.” And the fourth provision dealing with alcohol requires Hall to submit (at the request of his probation officer) to warrantless searches of “[his] person, personal property, residence[,], or any vehicle in which [he] may be found” for the presence of alcohol.

Hall contends that the superior court failed to make sufficient findings to justify these restrictions — and that, in any event, the facts of his case do not justify these types of probation conditions.

The only reason that the court gave for imposing the alcohol conditions described above is that Hall was “starting to signal that he has at least [a] potential substance abuse problem.”

It was proper for the superior court to be concerned that Hall might have a potential substance abuse problem, given Hall’s recent act of driving under the influence. Accordingly, the court could properly direct Hall to undergo screening and evaluation for alcohol abuse — which is, in fact, a requirement imposed by a separate condition of Hall’s probation. But instead of waiting for the results of this evaluation,

the court imposed a series of conditions that (1) completely prohibit Hall from drinking alcoholic beverages or ingesting medicines that contain alcohol, that (2) restrict his choice of residence, and that (3) require Hall to give up his Fourth Amendment rights — all to deal with what the court itself characterized as only a “potential” possibility that Hall was abusing alcohol.

We agree with Hall that the superior court’s findings fail to support the imposition of these conditions of probation, and we vacate them.

The other contested provisions of Hall’s probation

The superior court also imposed several probation conditions that do not involve alcoholic beverages.

One provision bars Hall from using, possessing, consuming, or ingesting “illegal controlled substances, including marijuana” — as well as prohibiting him from having any illegal controlled substance “in any of his bodily fluids”.

Another provision requires Hall to submit (at the request of his probation officer) to warrantless searches of “[his] person, personal property, residence[,], or any vehicle in which [he] may be found” for the presence of “illegal controlled substances, firearms, or concealable weapons.”

At Hall’s probation revocation sentencing hearing, when the superior court addressed the subject of the new conditions of probation that were proposed by Hall’s probation officer, the court said only that it was adopting the probation officer’s proposed conditions “regarding alcohol”. The court said nothing about the other provisions we have just described — the provisions dealing with illegal drugs, firearms, and concealable weapons. But even though the superior court did not mention these

provisions in its oral sentencing remarks, the superior court's written judgement incorporates these additional provisions.

Because of the apparent discrepancy between the superior court's oral sentencing remarks and the court's written judgement, these added conditions of probation may potentially constitute an illegal post-sentencing increase of Hall's sentence. Alternatively, the added conditions may simply be the result of a clerical error in the preparation of the written judgement.

To the extent that the superior court's sentencing remarks shed light on this question, those sentencing remarks support the inference that the addition of these probation conditions was a mistake — because, in his remarks, the judge declared that there was no evidence that Hall was using illegal drugs, and the judge never mentioned any concern that Hall was misusing firearms or other weapons.

But in any event, when there is a discrepancy between the sentence orally imposed by the court and the sentence later memorialized in the court's written judgement, the court's oral pronouncement of sentence controls.¹ It thus appears, as a legal matter, that Hall's written judgement should not contain these challenged conditions of probation.

Conclusion

The challenged conditions of probation are vacated. We do not retain jurisdiction over this case.

¹ *Marunich v. State*, 151 P.3d 510, 514 (Alaska App. 2006).