IN THE COURT OF APPEALS OF THE STATE OF ALASKA

LENARD LOUIS JOHNSON, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-11490 Trial Court No. 3PA-11-3290 CR MEMORANDUM OPINION No. 6580 — February 7, 2018

Appeal from the Superior Court, Third Judicial District, Palmer, Kari Kristiansen, Judge.

Appearances: Callie Patton Kim, Assistant Public Defender, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. Diane L. Wendlandt, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock, Superior Court Judge.[*]

Judge SUDDOCK.

At the age of fifty-nine, Lenard Louis Johnson was convicted of eight counts of first-degree sexual abuse of a minor for sexually abusing his stepdaughter and

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

step-granddaughter. Judge Kari Kristiansen sentenced Johnson to 60 years with 10 years suspended.

On appeal,[1] we affirmed Johnson's conviction, but we remanded the case for reconsideration of his probation conditions in light of our recent decisions in *Beasley v. State*, *Smith v. State*, and *Diorec v. State*.[2] We retained jurisdiction.

Without convening a hearing to afford the parties an opportunity to be heard, Judge Kristiansen issued a supplemental order and an amended judgment. The parties were entitled to be heard in the superior court, and Johnson was entitled to be present during this hearing. But in his supplemental brief in his renewed appeal, Johnson does not contest this procedural irregularity.

Johnson appeals, for a second time, six of his probation conditions. The State concedes, and we agree, that four of those conditions — requiring Johnson to submit to warrantless searches for firearms and ammunition and to pay restitution — should be vacated.

We first address the judge's imposition of a condition of probation requiring Johnson to submit to a search for firearms or ammunition. At sentencing, the State presented no evidence that Johnson had ever illegally used or possessed a deadly weapon. To justify the condition following our remand of the case, Judge Kristiansen noted that 18 U.S.C. § 922(g) prohibits Johnson, a convicted felon, from possessing firearms. But that fact standing alone does not justify a warrantless search of Johnson for such weapons.[3]

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[1] *Johnson v. State*, 2016 WL 3220953 (Alaska App. June 8, 2016) (unpublished).

[2] *Beasley v. State*, 364 P.3d 1130 (Alaska App. 2015); *Smith v. State*, 349 P.3d 1087 (Alaska App. 2015); and *Diorec v. State*, 295 P.3d 409 (Alaska App. 2013).

[3] *See Dayton v. State*, 120 P.3d 1073 (Alaska App. 2005).

In *Boles v. State* and *Dayton v. State*, this Court struck nearly identical provisions because the record did not indicate that the defendant in either case had used or possessed weapons, or that weapons played any role in either defendant's crime.[4] Consistent with those decisions, we vacate special condition no. 1 requiring Johnson to submit to warrantless searches for firearms or ammunition.

Special conditions nos. 2, 4, and 5 require Johnson to satisfy any court-ordered restitution and forfeiture of property. But neither the original nor the amended judgment ordered Johnson to pay any restitution or to forfeit any property. The State concedes that these three conditions should be vacated because they are inapplicable to Johnson's case. We agree.

In his supplemental briefing, Johnson challenges two other special conditions of probation: that he participate in a thirty-six-week domestic violence intervention program, and that he take any medication prescribed as part of treatment programs ordered by his probation officer. Both of these probation conditions were included in the original judgment, and both conditions went unchallenged in Johnson's initial appeal. Alaska law prohibits parties from dividing their claims among different appeals in the same lawsuit.[5] Because Johnson could have challenged these conditions of probation during his initial appeal, but did not, he is barred from challenging them now in his appeal following remand.

Johnson raises a separate issue that he did not address in his initial appeal, but that we address because of an intervening change in the law applicable to his case. In the original judgment, Judge Kristiansen imposed police training surcharges of $100 for each of Johnson's sixteen counts of sexual abuse of a minor. On remand, the judge

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[4] *Boles v. State*, 210 P.3d 454, 455 (Alaska App. 2009); *Dayton*, 120 P.3d at 1076.

[5] *Hurd v. State*, 107 P.3d 314, 327-330 (Alaska App. 2005).

noted that she had erred in imposing sixteen surcharges, because various counts had been merged into only eight convictions. She accordingly amended the judgment to impose a police training surcharge on each of Johnson's eight sexual abuse convictions, for a total surcharge of $800.

After the initial briefing in Johnson's appeal was completed, we decided *Miller v. State*, holding that only one police training surcharge could be imposed in any one criminal case.[6] Johnson now seeks the benefit of our holding in *Miller*. Because his case was pending at the time of our decision in *Miller*, the *Miller* holding governs the imposition of surcharges in Johnson's case.[7] We accordingly direct the superior court to revise its judgment to impose only one police training surcharge of $100.

Conclusion

We VACATE special conditions of probation nos. 1, 2, 4, and 5. We REMAND the case to the superior court for reduction of the police training surcharge to $100.

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[6] *Miller v. State*, 382 P.3d 1192, 1197 (Alaska App. 2016).

[7] *See Charles v. State*, 326 P.3d 978, 985 (Alaska 2014).