NOTICE

This is a summary disposition issued under Alaska Appellate Rule 214(b). Summary disposition decisions of this Court do not create legal precedent and are not available in a publicly accessible electronic database. See Alaska Appellate Rule 214(d).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

ROBERT STEPHEN CROWLEY JR., Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12416 Trial Court No. 3AN-09-12159 CR SUMMARY DISPOSITION No. 0015 — April 10, 2019

Appeal from the Superior Court, Third Judicial District, Anchorage, Michael R. Spaan, Judge.

Appearances: Paul E. Malin, under contract with the Public Defender Agency, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. Jason Gist, Assistant District Attorney, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, Harbison, Judge, and Coats, Senior Judge.[*]

Robert Stephen Crowley Jr. pleaded guilty, pursuant to a plea agreement, to one consolidated count of second-degree sexual assault based on allegations that he

[*] Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

forced his stepdaughter to perform fellatio on him.[1] Under the agreement, which was signed by Crowley personally, Crowley would receive a sentence of 15 years' incarceration with 5 years suspended, followed by 15 years of probation. In addition, the plea agreement specified twelve general and twenty-four special conditions of Crowley's probation.

Crowley's sentencing took place on June 6, 2012. Crowley did not object to any of the proposed probation conditions set forth in the presentence report (which mirrored the conditions in the plea agreement). The trial court accepted the plea agreement and imposed the agreed-upon sentence. The court also accepted the probation conditions set forth in the presentence report without conducting an individual review of those conditions.

Crowley later filed a pro se "Motion to Correct Vague Unconstitutional Probation Conditions" under AS 12.55.090(b).[2] In addition to challenging some of his probation conditions as unconstitutionally vague, Crowley also challenged some of his probation conditions as lacking a sufficient nexus to his offense and as giving too much discretion to his probation officer. The State opposed any modification, noting that Crowley had agreed to these conditions as part of his plea agreement. The trial court upheld the conditions, although the trial court agreed that the phrase "sexually explicit material" needed to be more clearly defined, and the court therefore modified that term.

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[1] AS 11.41.420(a)(1).

[2] AS 12.55.090(b) ("[T]he court may revoke or modify any condition of probation, change the period of probation, or terminate probation and discharge the defendant from probation."); *cf. Edwards v. State*, 34 P.3d 962, 969 (Alaska App. 2001) (holding that the State may request modification that will make probation more onerous only when there has been a "significant change of circumstances").

Crowley now appeals, arguing that the superior court erred when it refused to modify the other probation conditions that he challenged in his motion.

We have reviewed the probation conditions that are challenged on appeal. With regard to the probation conditions that were challenged solely for lack of nexus, we find no error in the trial court's ruling denying Crowley's motion to modify. As the trial court pointed out, Crowley agreed to these conditions as part of his plea agreement and Crowley has shown no reason why these conditions should not apply to him per his express agreement. For the same reason, we find no error in the trial court's rejection of Crowley's challenges to the various search conditions, the conditions in which the probation officer has oversight, and the conditions restricting his contact with minors.

We agree with Crowley, however, that Special Condition 9, prohibiting possession of "paraphernalia normally associated with the illicit use of drugs" provides constitutionally inadequate notice of the items prohibited under this condition.[3] The same is true of Special Condition 23, which requires Crowley to inform anyone with whom he has a "significant relationship" or is "closely affiliated" of his history as a sex offender.[4]

We also direct the superior court to clarify its order regarding its modification of the phrase "sexually explicit material." The court's order mistakenly refers to Special Condition 17, which does not refer to sexually explicit material. We interpret the court's order as applying to the conditions that do reference "sexually explicit material" — namely, Special Conditions 14, 15, and 16.

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[3] *See Myers v. Anchorage*, 132 P.3d 1176, 1181-86 (Alaska App. 2006).

[4] *See Smith v. State*, 349 P.3d 1087, 1095 (Alaska App. 2015); *Whiting v. State*, 2014 WL 706268, at *2 (Alaska App. Feb. 19, 2014) (unpublished).

Lastly, we note that one of Crowley's special conditions of probation — a condition that he did not move to modify but that he nevertheless challenges on appeal — is facially invalid. Special Condition 6 requires Crowley to "enroll in a residential mental health or substance abuse program" but does not specify a maximum term of residential treatment. When a sentencing court orders a defendant to participate in residential treatment, the court must "specify the maximum length of residential treatment."[5] Failure to do so invalidates the probation condition.[6]

Accordingly, we VACATE the residential treatment portion of Special Condition 6, and we REMAND Crowley's case to the superior court to give the court an opportunity to revise Special Conditions 9 and 23 so that they provide adequate notice of the prohibited conduct.[7] We also direct the superior court to clarify that its earlier modification concerning "sexually explicit material" applies to all of the conditions that reference that term. In all other respects, we AFFIRM the judgment of the superior court.

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[5] *Christensen v. State*, 844 P.2d 557, 558 (Alaska App. 1993); *see also* AS 12.55.-100(c); *Ranstead v. State*, 2016 WL 2944797, at *5 (Alaska App. May 18, 2016), *aff'd in part, rev'd in part*, 421 P.3d 15, 25 (Alaska 2018) (the pertinent holding was affirmed on appeal).

[6] *Christensen*, 844 P.2d at 558.

[7] *See Diorec v. State*, 295 P.3d 409, 417 (Alaska App. 2013) (requiring trial court to revise condition to provide constitutionally adequate notice of prohibited conduct).