IN THE COURT OF APPEALS OF THE STATE OF ALASKA

RANDY WASSILLIE, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-13970 Trial Court No. 4BE-19-00619 CR SUMMARY DISPOSITION No. 0338 — August 9, 2023

Appeal from the Superior Court, Fourth Judicial District, Bethel, Nathaniel Peters, Judge.

Appearances: Paul E. Malin, Attorney at Law, under contract with the Public Defender Agency, and Samantha Cherot, Public Defender, Anchorage, for the Appellant. Kenneth M. Rosenstein, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Treg R. Taylor, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Wollenberg and Terrell, Judges.

Randy Wassillie pleaded guilty to one count of second-degree sexual abuse of a minor for conduct involving his eleven-year-old niece.[1] Prior to sentencing, the presentence report writer proposed a probation condition which stated:

> The probationer shall, if decided appropriate by his probation officer and sex offender treatment provider, enter

[1] AS 11.41.436(a)(2).

> and successfully complete any other Department-approved programs, including but not limited to cognitive errors or mental health programming. The probationer shall sign releases of information to enable other programs to exchange verbal and written information with the probation officer and sex offender treatment provider.

At sentencing, Wassillie objected to this proposed condition on the basis that it impermissibly delegated the superior court's sentencing authority to his probation officer and sex offender treatment provider. The superior court disagreed, finding that the condition was appropriate, and imposed it.

Wassillie now renews this argument on appeal. In *Diorec v. State*, we rejected this same claim with respect to a virtually identical probation condition, and we do so again here.[2] We note that under AS 12.55.100(a)(2)(E), a probation officer may only mandate participation in a treatment program if the program is "related to the defendant's offense or to the defendant's rehabilitation." If Wassillie believes that a specific program that is later imposed pursuant to this condition does not relate to his offense or to his rehabilitation, he can seek judicial review.[3]

Wassillie additionally asserts that the probation condition is invalid because it authorizes his probation officer and sex offender treatment provider to direct him to enter inpatient residential treatment programming, but does not set a maximum length for how much time he can be required to spend in such programming.[4] But the

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[2] *Diorec v. State*, 295 P.3d 409, 414-15 (Alaska App. 2013).

[3] *See Giddings v. State*, 2018 WL 3301624, at *4 (Alaska App. July 5, 2018) (unpublished).

[4] *See* AS 12.55.100(c) (providing that a program of inpatient treatment must be "authorized in the judgment, and may not exceed the maximum term . . . specified in the judgment"); *see also Galindo v. State*, 481 P.3d 686, 690 (Alaska App. 2021) ("[T]he failure to set an upper limit for the residential treatment provision is contrary to both statute and case law, and thus [is] plainly erroneous."); *Christensen v. State*, 844 P.2d 557, 558-59 (Alaska App. 1993) (holding that a probation condition requiring residential treatment

language of Wassillie's probation condition does not explicitly refer to *inpatient* treatment, and the court did not authorize (let alone discuss) *inpatient* treatment at sentencing. We have previously declined to construe such a condition as authorizing inpatient treatment when the condition did not expressly specify so, and we again do so here.[5]

The judgment of the superior court is AFFIRMED.

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if recommended by a substance abuse evaluation was illegal because it failed to set a maximum period for such treatment).

[5] *Sanchez Rosario v. State*, 2021 WL 386939, at *2 & n.14 (Alaska App. Feb. 3, 2021) (unpublished); *Giddings*, 2018 WL 3301624, at *4 & n.18.