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STATE OF CONNECTICUT *v.* KEVIN M. BOYLE
(AC 28157)

Bishop, McLachlan and Lavine, Js.

Argued April 17—officially released July 17, 2007

(Appeal from Superior Court, judicial district of New Britain, geographical area number fifteen, Vitale, J.)

Martin Zeldis, public defender, for the appellant (defendant).

Timothy J. Sugrue, senior assistant state's attorney, with whom, on the brief, were *Scott J. Murphy*, state's attorney, and *Louis J. Luba, Jr.*, senior assistant state's attorney, for the appellee (state).

Opinion

BISHOP, J. The defendant, Kevin M. Boyle, appeals from the modification of the conditions of his probation resulting in the imposition of a special condition that he claims is unrelated to the offense for which he is serving probation. Because there is no nexus between the modified condition and the charge for which the defendant is serving probation, we reverse the judgment of the trial court.

The following factual and procedural history is relevant to the consideration of the defendant's appeal. On August 24, 2005, the defendant was charged with operating a motor vehicle while under the influence of intoxicating liquor or drugs in violation of General Statutes § 14-227a and failure to drive in the proper lane in violation of General Statutes § 14-236. The defendant entered into a plea agreement and pleaded guilty to the charge of operating a motor vehicle while under the influence of intoxicating liquor or drugs. On April 5, 2006, pursuant to the plea agreement, the court sentenced the defendant to six months incarceration, execution suspended after thirty days, with eighteen months probation. The court also imposed conditions of probation that the defendant (1) participate in substance abuse evaluation, as well as testing, treatment or both, (2) participate in a victim impact panel, (3) not operate a motor vehicle without a valid driver's license, registration or insurance and (4) participate in 150 hours of community service to be completed within the first fifteen months of his probation period.

The defendant was released from incarceration and began serving probation on May 4, 2006. On July 28, 2006, the office of adult probation filed a motion seeking modification of the conditions of the defendant's release. Specifically, the probation officer assigned to the case requested that the defendant be required to review, sign and abide by all sexual offender conditions of probation to include sexual offender evaluation and any recommended treatment, polygraph examinations and Abel screens, which are specialized tests to determine a person's sexual interest in children, as deemed necessary by the office of adult probation. The request was based on the probation officer's discovery that the defendant had a 1997 conviction of sexual assault in the fourth degree stemming from an incident that occurred in 1995, that the defendant was listed on the state's sex offender registry and that a parole board evaluation conducted in 2001 rated the defendant's recidivism-sexual offense relapse risk as high and his dangerousness-severity of risk as severe.

At the hearing on the request to modify the conditions of probation and to impose the sexual offender condition, the probation officer testified that his basis for making the request was the policy of the office of adult

probation to do so out of an abundance of caution where the probationer had a prior sexual offense conviction and was still on the sex offender registry. The probation officer referred to no behavior on the part of the defendant during his probation that gave rise to this requested modification. The probation officer testified, however, that because the use of alcohol was a factor in the defendant's past crimes, he believed it was necessary to make the recommendation in case the defendant started drinking again. In response to the court's inquiry as to how the condition of sexual offender evaluation was reasonably related to the defendant's current rehabilitation, the probation officer stated that he did not believe that it was "so much related to his rehabilitation as much as it [was] to his supervision and the safety to the community as a probation department." The probation officer acknowledged that the defendant's conviction of operating a motor vehicle while under the influence of intoxicating liquor or drugs had no sexual component, that he had no present indication that the defendant was using or abusing alcohol and that the defendant was enrolled in a substance abuse program in accordance with the terms of his probation.

In response, the defendant argued that if specific problems with alcohol arose in the future, the conditions imposed at sentencing relating to alcohol use were sufficient to address any such issue. The defendant further argued that the conditions regarding sexual offender treatment were completely unrelated to the charge of operating a motor vehicle while under the influence of intoxicating liquor or drugs for which he is currently on probation. Additionally, the defendant contended that there was nothing to indicate any probability that he would commit a sexual offense while on probation, especially because it had been more than ten years since he had been convicted of the sexual assault charge and at least five years since he had been under supervision by the department of correction or office of adult probation.

On August 7, 2006, the court granted the motion for modification and imposed a condition of probation requiring the defendant to review, sign and abide by all sexual offender conditions of probation, including sexual offender evaluation and any recommended treatment, polygraph examination and Abel screens as deemed necessary. In its memorandum of decision, the court stated that *State v. Pieger*, 240 Conn. 639, 692 A.2d 1273 (1997), required the condition of probation to be reasonably related to the purposes of probation. Quoting broad language from *Pieger*, the court determined that any condition could be imposed if it would help serve the defendant's reformation. The court noted that the probation officer testified that alcohol was a common denominator in the defendant's criminal history and, in particular, that it "fueled the conduct which

resulted in his sexual assault conviction.” The court concluded that the sexual offender condition was “reasonably necessary to rehabilitate the defendant and reasonably necessary to protect prospective victims.” This appeal followed.

On appeal, the defendant contends that the additional condition requiring him to participate in sexual offender evaluation, treatment or both is improper because it is not related to his rehabilitation for the crime to which he pleaded guilty and for which he is currently serving probation. We agree.

In order to determine whether the legislature intended to allow the imposition of such a condition of probation, we begin with the familiar principles of statutory construction. “When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter” (Internal quotation marks omitted.) *Pasquariello v. Stop & Shop Cos.*, 281 Conn. 656, 663–64, 916 A.2d 803 (2007). We first look to the language of the statute and to the general goals of probation in order to discern the intent of the legislature in enacting subdivision (17) of General Statutes § 53a-30 (a).

General Statutes § 53a-30 (a) provides in relevant part that “[w]hen imposing sentence of probation or conditional discharge, the court may, as a condition of the sentence, order that the defendant . . . (17) satisfy any other conditions reasonably related to the defendant’s rehabilitation. . . .” The comment of the commission to revise the criminal statutes, which first proposed adoption by the legislature of our present criminal code more than thirty years ago, provides in relevant part as to § 53a-30: “This section sets out, as a kind of guideline, the general conditions that the court may impose on the sentence of probation The list is not intended to be exhaustive.” Commission to Revise the Criminal Statutes, Penal Code comments, Connecticut General

Statutes Annotated § 53a-30 (West 2001), commission comment. Thus, pursuant to § 53a-30 (a), a sentencing court may impose a variety of conditions to a sentence of probation that are aimed at rehabilitating the defendant.

In viewing the general goals of probation together with the broad language of the statute, we conclude that the trial court has the broad authority and flexibility to impose conditions to reach the desired ends of rehabilitating the probationer. Thus, for example, the court has the authority to impose sexual offender treatment as a special condition of probation. See *State v. Cyr*, 57 Conn. App. 743, 746–48, 751 A.2d 420, cert. denied, 254 Conn. 905, 755 A.2d 883 (2000). The court’s authority, however, is not unbridled. In the exercise of its discretion, the court’s imposition of a condition must reasonably relate to the purposes of probation.

“Probation conditions serve two primary purposes. [They] are meant to assure that the probation serves as a period of genuine rehabilitation and that the community is not harmed by the probationer’s being at large. . . . Because probation is part of a criminal sentence, probation conditions often restrict the liberty rights of a probationer by imposing serious restraints on a probationer’s life-style, associations, movements and activities. . . . Nevertheless, a condition of probation may diminish a probationer’s liberty rights only to the extent necessary for his reformation and rehabilitation.” (Citations omitted; internal quotation marks omitted.) *State v. Graham*, 33 Conn. App. 432, 448, 636 A.2d 852, cert. denied, 229 Conn. 906, 640 A.2d 117 (1994).

“When sentencing a defendant to probation, a trial court has broad discretion to impose conditions. . . . Nevertheless, this discretion is not unlimited, as statutory and constitutional constraints must be observed. . . . General Statutes § 53a-30 enumerates the conditions that the trial court may impose on a defendant.” (Citations omitted.) *State v. Graham*, supra, 33 Conn. App. 447. Although the list of conditions set forth in § 53a-30 was meant to be illustrative, and not exhaustive, the gamut of potential conditions of probation to be imposed on a defendant is not unbounded. “On appeal, we review whether the trial court abused its statutory discretion in imposing a condition of probation.” *Id.*

“[I]n determining whether a condition of probation [is proper] a reviewing court should evaluate the condition imposed under our Adult Probation Act in the following context: The conditions must be reasonably related to the purposes of the [Probation] Act. Consideration of three factors is required to determine whether a reasonable relationship exists: (1) the purposes sought to be served by probation; (2) the extent to which constitutional rights enjoyed by law-abiding citizens should be accorded to probationers; and (3) the legitimate needs

of law enforcement.” (Internal quotation marks omitted.) *State v. Thorp*, 57 Conn. App. 112, 116–17, 747 A.2d 537, cert. denied, 253 Conn. 913, 754 A.2d 162 (2000). In the present case, our focus is on the first factor, the purposes sought to be served by probation.

Here, the court relied primarily on *State v. Pieger*, supra, 240 Conn. 639, and *State v. Cyr*, supra, 57 Conn. App. 743, to support its conclusion that the condition of sexual offender evaluation was appropriate. On closer examination, however, neither *Pieger* nor *Cyr* supports the trial court’s conclusion. In *Pieger*, the defendant was convicted of evading responsibility in connection with an accident in which he struck a pedestrian with his vehicle. The trial court required, as a condition of probation, that the defendant donate \$2500 to the hospital in which the victim was being treated for severe injuries. On appeal, our Supreme Court affirmed the imposition of the condition because it was reasonably related to the defendant’s rehabilitation, as it forced him to confront the harm his actions caused. *State v. Pieger*, supra, 650. Moreover, the court stated that “requiring the defendant to make a donation to the hospital . . . was more rehabilitative than requiring the defendant to pay a fine because the donation had a direct relationship to the accident and the injuries, thereby advancing the rehabilitative purpose of making the defendant accept his responsibility for the accident.” (Emphasis added.) *Id.* The court concluded that “as long as the condition requiring monetary payment shares a nexus with the defendant’s crime, as in this case, it is reasonably related to rehabilitation.” *Id.*, 651. The court further noted: “In the present case the nexus shared by the defendant’s crime and the imposed condition of making a donation is clear—the donation is to be made to the hospital where the victim of the crime was treated. In future cases, however, express findings supporting the requisite nexus would alleviate any concerns on the part of a reviewing court.” *Id.*, 651 n.5.

In *Cyr*, the defendant was convicted of risk of injury to a child and prostitution. *State v. Cyr*, supra, 57 Conn. App. 745. The trial court imposed a condition of sexual offender treatment. The defendant failed to comply with that condition, and his probation was revoked. In his appeal challenging the revocation of probation, the defendant claimed that the trial court lacked authority to impose the sexual offender treatment as a condition of probation. This court disagreed and affirmed the revocation of probation, concluding that although the statute under which the defendant was convicted was not an enumerated offense *requiring* sexual offender treatment; see General Statutes § 53a-30; the trial court nevertheless could legally impose such condition. *State v. Cyr*, supra, 57 Conn. App. 747–48. Specifically, this court noted that the trial court imposed the condition only after it considered “the facts alleged in the risk of impairing morals of a child charges and concluded that

given *the sexual nature and circumstances of the crimes for which the defendant was on probation*, and the fact that the victims were children, the sexual offender evaluation and treatment condition was reasonable, justified and *clearly related* to the defendant's rehabilitative needs and the protection of society." (Emphasis added.) Id., 748.

In *State v. Smith*, 207 Conn. 152, 540 A.2d 679 (1988), in which the defendant had been convicted of robbery, he admitted that the robbery was committed so that he would be able to purchase drugs. Id., 154. One year into the defendant's probation, his probation officer determined that the defendant was involved with drugs again. Id., 155. As a result, a drug testing-urinalysis condition of probation was imposed and, after a positive urine test, the defendant's probation was violated. Id., 156–57. On appeal, our Supreme Court addressed the necessary connection between the added probation condition and rehabilitation for the offense that resulted in the underlying conviction. The court concluded: "It is simply unreasonable for the defendant, found guilty of robbery in the first degree intended to generate money to pay for drugs for himself, to believe that if, during the ongoing contact with the probation officer, the use of drugs was reasonably suggested by his conduct or appearance, he would never expect to be subject to some type of drug testing. . . . [T]he court was entitled to impose urinalysis testing. It clearly was reasonably related to the defendant's rehabilitation and to the goals of probation. It was a foreseeable consequence" Id., 172.

In *State v. Misiorski*, 250 Conn. 280, 282–83, 738 A.2d 595 (1999), the defendant pleaded guilty to sexual assault in the fourth degree and public indecency in a case involving a mentally impaired victim. The trial court ordered, as a condition of probation, that the defendant undergo sexual offender testing, counseling and treatment. Id., 284. Subsequently, the office of adult probation informed both the court and the defendant that it intended to notify the defendant's neighbors and fellow bowling league participants of the defendant's conviction. The defendant objected, and the court held a hearing to determine whether the office of adult probation had authority to impose such a condition. Id., 284–85. The court found that it did. On appeal, the Supreme Court concluded: "Notification to the public was a reasonable component of the defendant's sexual offender treatment." Id., 289.

Conversely, in *State v. Thornton*, 55 Conn. App. 28, 739 A.2d 271 (1999), the defendant was convicted of risk of injury to a child, and this court held that it was not proper to impose as a condition of probation the payment of money into a fund to compensate the victim for presently unknown treatment costs. The court held: "[These costs were] far too remote to be considered

‘reasonably related to the offense’ or ‘easily ascertainable damages for injury’ to be allowed under § 53a-28 (c).” Id., 34.

In *State v. Graham*, supra, 33 Conn. App. 432, 434. the defendant was convicted of larceny and drug offenses. The trial court imposed as a condition of probation that the defendant must keep her house and children clean and that any child of hers younger than age thirteen could not be left unattended. Id., 446. On appeal, this court held that the imposition of these conditions of probation was improper because the “conditions regarding cleanliness of the home and care and cleanliness of the children do not serve to rehabilitate or to reform the defendant because they do not relate to the defendant’s behavior involved in her convictions for larceny and drug crimes.” Id., 448.

On the basis of the previously discussed case law, it is evident that in order for a condition of probation to be “reasonably related to the defendant’s rehabilitation” pursuant to § 53a-30 (a) (17),¹ there must be a nexus between the condition of probation and the charge for which the defendant is serving probation. Such a requirement not only serves to rehabilitate a defendant on the basis of the crime committed but also protects the constitutional rights of the probationer.²

Here, the defendant pleaded guilty to operating a motor vehicle while under the influence of intoxicating liquor or drugs. There was no sexual component involved in this offense. Thus, the condition imposing sexual offender evaluation and treatment is not related to the offense for which the defendant is on probation. The court rationalized its imposition of sexual offender evaluation and treatment by stating that because alcohol was the common denominator in his criminal history, including his sexual offense from more than ten years prior, the added condition was reasonably related to the defendant’s conviction of operating a motor vehicle while under the influence of intoxicating liquor or drugs. The fact that alcohol may have been the common denominator in the defendant’s criminal history might support the imposition of the requirement of alcohol counseling for any of his other crimes. Because the defendant’s sexual conduct was not a common thread in the defendant’s criminal history and was wholly unrelated to the defendant’s present conviction, however, there is no logical nexus between the added condition of probation and the underlying offense of which he was convicted.

On the basis of the foregoing, we conclude that the court abused its discretion by modifying the conditions of the defendant’s probation and imposing the requirement of sexual offender evaluation and treatment.

The judgment is reversed and the case is remanded with direction to deny the motion for modification of

the conditions of probation.

In this opinion McLACHLAN, J., concurred.

¹ General Statutes § 53a-30 (a) provides in relevant part: “When imposing sentence of probation or conditional discharge, the court may, as a condition of the sentence, order that the defendant . . . (17) satisfy any other conditions reasonably related to the defendant’s rehabilitation. . . .”

² The defendant also claims on appeal that the imposition of the sexual offender condition violates his constitutional rights because it renders his plea unknowing and involuntary and amounts to an additional punishment for a sexual offense that he committed more than ten years ago, an offense for which he has served his sentence. Because we agree with the defendant’s first claim, we need not address his additional claims.