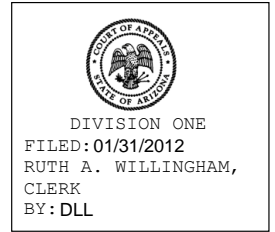


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 11-0079
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication - Rule
JEFF PETRONE,) 111, Rules of the Arizona
) Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Yavapai County

Cause Nos. V1300CR820090098
V1300CR820090261

The Honorable Joseph C. Welty, Judge

REVERSED

Thomas C. Horne, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
and Barbara A. Bailey, Assistant Attorney General
Attorneys for Appellee

Yavapai County Public Defender Prescott
By Abigail Jensen, Deputy Public Defender
Attorneys for Appellant

N O R R I S, Judge

¶1 Jeff James Petrone timely appeals the superior court's
order revoking his probation and imposing sentences for one

count of attempted stalking and one count of tampering with a public record. He argues an order entered by the superior court at the time it suspended his sentences and placed him on probation -- that he was not to contact his attempted-stalking victims -- was "not a condition of [his] probation" and thus did not support revocation. For the reasons discussed below, we agree.

FACTS AND PROCEDURAL BACKGROUND

¶12 On February 10, 2010, relying on a plea agreement Petrone accepted and signed, the superior court placed Petrone on one year of unsupervised probation, and ordered him to "have no contact in any manner with [his attempted-stalking victims] by any means what so ever, written, verbal or by third party for the next three (3) years" ("no-contact" order). On October 20, 2010, the Yavapai County probation office filed a petition to revoke his probation asserting he had violated the no-contact order. After an evidentiary hearing, the superior court agreed ample evidence showed Petrone had contacted the victims in violation of the order. Because Petrone argued at the hearing he had only violated the court's no-contact order and it was not a condition of his probation, the court found that "included within the conditions of unsupervised release is the condition that the defendant shall have no contact [with his attempted-stalking victims]." The court subsequently revoked Petrone's

probation and imposed sentences of imprisonment. In doing so, it relied upon its finding the no-contact order was a condition of probation.

DISCUSSION

¶13 As discussed, Petrone argues the no-contact order was not a condition of his probation and thus the court was not entitled to revoke his probation for violating it. On this record, we agree. Although it is clear in revoking Petrone's probation the superior court, without the benefit of the change of plea and sentencing ("sentencing hearing") transcript, believed it had imposed the no-contact order as a condition of probation, the record before us does not reflect this.

¶14 First, the record is clear and the State agrees the document Petrone signed entitled "Conditions of Unsupervised Probation" did not include the no-contact order. Second, at the sentencing hearing, Petrone asked the court about the no-contact order, noting the court had imposed it for three years while only imposing probation for one year. The exchange that followed reflects the court believed the no-contact order was an order of the court rather than a term of probation. In pertinent part, the exchange was as follows:

THE COURT: My understanding of [the no-contact] provision, Mr. Petrone . . . is that that's an order of the Court, and that's an order of the Court that you've agreed to by contract.

DEFENDANT PETRONE: So, then it will be under subject to contempt?

THE COURT: If you violate that Court order, you may be subject to contempt.

DEFENDANT PETRONE: Or criminal contempt penalty.

THE COURT: Or civil contempt.

¶15 Despite this, the State argues that in revoking probation, the court "necessarily determined that the [no-contact] provision was a condition of [Petrone's] probation" and the failure to include the order on the Conditions of Unsupervised Probation form was "a technical error." We reject both arguments.

¶16 First, the court's discussion with Petrone at the sentencing hearing, *see supra* ¶ 4, undercuts these arguments. In explaining the potential consequences of violating the no-contact order to Petrone, the court did not say it could revoke his probation, and instead discussed contempt. Second, the State's arguments are undercut by the principle that when a term of probation expires, the probationer is "discharged absolutely," Arizona Rule of Criminal Procedure 27.5(a), and "[o]nce the period of probation has expired, the court lacks jurisdiction to revoke probation," *State v. Johnson*, 182 Ariz. 73, 73, 893 P.2d 73, 73 (App. 1995). Thus, because the court made no mention of retaining jurisdiction to enforce the no-

