

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JACOB JOHN MALTBY,

Defendant-Appellant.

UNPUBLISHED

March 17, 2009

No. 280686

Charlevoix Circuit Court

LC No. 05-002810-FH

Before: Murphy, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's denial of his motion to amend the terms of his probation. We decline to address defendant's claim because the issue is moot.

Defendant entered a guilty plea to operating a motor vehicle while intoxicated, third offense (OUIL 3d), MCL 257.625(1) and (9)(c). He was sentenced on September 2, 2005, to a probation term of three years. Defendant was initially incarcerated for a short period of time and attended court-ordered weekly counseling. It was at these group-counseling sessions that he met Sara Groh. After his release from jail, the two remained in contact and developed an intimate relationship. At one point, defendant was verbally warned by his probation officer that his association with Groh was a bad idea, and the officer told defendant to stay away from her. However, the two maintained their intimate relationship.

Several months later Groh tested positive for methadone and OxyContin. Thereafter, the trial court granted defendant's probation officer's request to amend the conditions of defendant's probation to include a prohibition against direct or indirect contact with Groh. Defendant then filed a motion to modify the amended order, alleging that because he and Groh were recently engaged, the no-contact order constituted a direct and substantial interference with their intimate relationship and that such interference could not survive a constitutional strict scrutiny analysis.

Defendant contends that the trial court's refusal to amend the terms of his probation relative to contact with Groh constituted a substantial interference with his right to marry. Defendant's term of probation has now expired. Because defendant is no longer subject to the challenged condition of his probation, this issue is moot. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 50; 748 NW2d 221 (2008) (we generally do not address moot questions or declare principles of law that have no practical legal effect in the case before us). The record reflects that on December 28, 2007, the court found that defendant violated the terms of his probation by

consuming alcohol and by visiting with Groh. The court revoked defendant's probation and sentenced him to a 30-day jail term.¹ The appellate issue presented by defendant remains moot despite the fact that he now has a probation violation on his record based, in part, on his contact with Groh. Even were we to conclude that the challenged probation term was unconstitutional, defendant nonetheless violated probation by consuming alcohol, which he admitted, and having a blood alcohol content of .15. Therefore, the overall ruling that defendant violated probation would remain intact regardless of any substantive holding by us on the constitutional claim. And the 30-day jail sentence was completed long ago. We are not persuaded that defendant's claim presents exceptional circumstances requiring this Court's attention in light of the expiration of his term of probation. *Id.* at 50-51.

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey

¹ The Michigan Department of Corrections' Offender Tracking Information System (OTIS) indicates that defendant was discharged from probation on December 28, 2007, and that he is not currently subject to any active probation sentence. See *People v Harden*, 474 Mich 862; 703 NW2d 189 (2005) ("we are not persuaded that the question presented should be reviewed by this Court inasmuch as the Offender Tracking Information System indicates that defendant's probation was discharged on September 22, 2004").