IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. MICHAEL A. FONTENOT, Appellant.	No. 41450-3-II UNPUBLISHED OPINION

Armstrong, J. — Michael Anthony Fontenot appeals the trial court's revocation of his Special Sex Offender Sentencing Alternative sentence (SSOSA). Fontenot argues that he received insufficient notice of the basis for revocation to satisfy due process principles. We find no error and thus affirm.

FACTS

Michael Anthony Fontenot pleaded guilty to two counts of second degree child rape. The trial court granted Fontenot a SSOSA, sentenced him to 131 months to life, and suspended 125 months of confinement under SSOSA. Fontenot served six months of confinement and then started sex offender treatment with Jeanglee Tracer.

Under the conditions of his SSOSA, Fontenot was not allowed contact with minors. Additionally, he was not to engage in any romantic relationship without first informing his community correction officer of the relationship. Fontenot served two additional confinement sentences for violating these conditions: January 2007: 30 days' confinement for having a romantic relationship with an adult women without notifying his correction officer; November 2008: 120 days' confinement for the same violation.

In March 2009, Fontenot started working with a long time friend, Pamela Morse. Morse has a daughter who was six years old at the time. After reporting to his treatment group that he wanted a romantic relationship with Morse, Fontenot's group advised him against any such relationship. Although Fontenot did not immediately pursue a romantic relationship, he maintained a business relationship with Morse. As time went by, Fontenot engaged in a romantic relationship with Morse, including one instance of sexual contact.

In June 2010, Fontenot completed his treatment program and the trial court released him from treatment on July 9, 2010. On July 22, Fontenot's correction officer filed a violation notice against Fontenot, seeking revocation of the SSOSA sentence. The correction officer alleged three instances of contact with a minor on September 30, 2009, July 11 and July 15, 2010. Due to the notice, Fontenot submitted to a polygraph explaining the nature of his relationship with Morse and his contacts with her daughter, M.M.

At the revocation hearing on October 26, 2010, Fontenot stipulated to all the statements made during the polygraph; he also conceded committing the following six violations: (1) incidental contact with a minor on September 30, 2009; (2) contact with a minor at church on July 11, 2010; (3) contact with a minor during a several-hour outing in Seattle with Morse and M.M.; (4) a romantic relationship with Morse without notifying his correction officer; (5) a dating relationship with Morse, the mother of a minor, without prior approval by correction officer; and (6) proximity contact with the minor on 5-10 occasions.

Fontenot's former treatment provider, Tracer, testified that Fontenot qualified for extended treatment, and she would accept him back into her program. She explained that

Fontenot's significant progress during the earlier treatment made him a good candidate for continued treatment. During cross-examination, Tracer admitted that Fontenot clearly violated his conditions by not disclosing his relationship with Morse and that trust and honesty are key to progressing in her program. Further, Tracer discussed Fontenot's relapse prevention plan, which sets out triggers that Fontenot should recognize and steps to prevent relapse. Despite Tracer's admission that Fontenot failed to use the relapse prevention plan, she believed he was amenable to further treatment.

The trial court revoked Fontenot's SSOSA sentence, reasoning that Fontenot knew the rules of community custody, and knew he was violating the rules during the hearing that released him from therapy; the trial court decided he was too much of a risk to reinstate the treatment program.

ANALYSIS

I. Due Process

Fontenot argues that he received insufficient notice of the alleged violations. Specifically, he claims that he was informed of six particular violations, but the court revoked his SSOSA sentence for failing to make satisfactory progress in treatment. The State responds that Fontenot did not preserve this issue for appeal, and even if he did, the trial court revoked his SSOSA sentence based on the six violations included in his notification.

The SSOSA statute allows a trial court to suspend a sentence for qualified sexual offenders if the offender is shown to be amenable to treatment. RCW 9.94A.670; *see also State v. Miller*, 159 Wn. App. 911, 917, 247 P.3d 457, *review denied*, 172 Wn.2d 1010 (2011). A trial

court "may revoke the [SSOSA] at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, *or* (b) the court finds that the offender is failing to make satisfactory progress in treatment." RCW 9.94A.670(11) (emphasis added).[1]

Because the revocation of a suspended sentence is not a criminal proceeding, the offender is afforded minimal due process rights. *State v. McCormick*, 166 Wn.2d 689, 699-700, 213 P.3d 32 (2009). Due process for revocation hearings requires:

> (a) [W]ritten notice of the claimed violations; (b) disclosure to the parolee of the evidence against him; (c) the opportunity to be heard; (d) the right to confront and cross-examine witnesses (unless there is good cause for not allowing confrontation); (e) a neutral and detached hearing body; and (f) a statement by the court as to the evidence relied upon and the reasons for the revocation.

State v. Dahl, 139 Wn.2d 678, 683, 990 P.2d 396 (1999) (citing *Morrissey v. Brewer*, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972)). We review due process challenges de novo. *See City of Redmond v. Moore*, 151 Wn.2d 664, 668, 91 P.3d 875 (2004).

An offender waives his right to claim a due process notice violation if he does not object during the revocation hearing. *State v. Robinson*, 120 Wn. App. 294, 299-300, 85 P.3d 376 (2004) (citing *State v. Nelson*, 103 Wn.2d 760, 697 P.2d 579 (1985) (stating that the offender cannot sit by, without objection, and then raise for the first time on appeal a due process violation)).

In *Robinson*, the defendant was released from prison subject to community placement

[1] Fontenot includes a footnote about the former version of this statute; however, effective August 1, 2009, the legislature changed the numbering to be consistent with the current statute. Because Fontenot's actions constituting the basis for revocation all occurred after August 1, 2009, we cite the current statute.

conditions. *Robinson*, 120 Wn. App. at 297. Robinson was accused of violating eight different conditions. *Robinson*, 120 Wn. App. at 297. The Department of Corrections prepared a document alleging all eight violations, but it was unclear whether Robinson ever received that document. *Robinson*, 120 Wn. App. at 297-98. The State also prepared a document giving notice of two of the allegations. *Robinson*, 120 Wn. App. at 298. At the hearing on the matter, Robinson admitted six of the eight allegations and denied two. *Robinson*, 120 Wn. App. at 298. The court held that Robinson waived any issue as to adequate notice by failing to object below. *Robinson*, 120 Wn. App. at 299-300. The court noted that Robinson was apparently prepared to address the merits because he admitted six allegations, and the other two were contained in the State's document detailing the allegations. *Robinson*, 120 Wn. App. at 300 n.3.

Here, the State initially alleged one violation, having contact with a minor on July 15, 2010. Then, a Court Notice of Violation was prepared, which listed two additional violations – the other two allegations of contact with a minor. Although Fontenot did not receive written notice of all six violations, he submitted to a polygraph test in which he admitted all six violations. On October 25, 2010, Fontenot filed a Memorandum in Opposition to State's Petition, in which he specifically objected, based on due process grounds, to any allegations of violations beyond contact with a minor on July 15, 2010. Despite the objection, at the hearing on October 26, 2010, Fontenot stipulated to everything in the polygraph and stipulated that the basis of the violations included all six allegations. As the *Robinson* court noted, the stipulation to the violations points to the conclusion that Fontenot was prepared to defend against all of the allegations at the time of the hearing. *Robinson*, 120 Wn. App. at 300 n.3. And after his stipulation to six alleged

violations, Fontenot never again raised the issue before the trial court.

Because Fontenot stipulated to the violations and did not again object to whether the six allegations were before the court, we hold that he waived any due process claims on appeal.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Quinn-Brintnall, J.

Penoyar, C.J.