IN THE COURT OF APPEALS OF THE STATE OF ALASKA

ANTHONY R. SHELTON, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12881 Trial Court No. 4EM-16-00005 CR MEMORANDUM OPINION No. 6820 — September 11, 2019

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

Appearances: Kimberly A. Tsaousis, Assistant Public Advocate, and Richard K. Allen, Public Advocate, Anchorage, for the Appellant. Donald Soderstrom, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, Fabe, Senior Supreme Court Justice,[*] and Andrews, Senior Superior Court Judge.[*]

Judge ALLARD

[*] Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

Pursuant to plea agreements, Anthony R. Shelton and Louis Shelton pleaded guilty to third-degree sexual abuse of a minor. Anthony is the biological grandson and adopted son of Louis. The charges arose after Anthony and Louis sexually abused the thirteen-year-old friend of Louis's granddaughter (Anthony's sister). At sentencing, over Anthony's objection, the superior court imposed several probation conditions restricting Anthony's contact with Louis. Anthony now appeals the imposition of those conditions.[1] Anthony also appeals the imposition of a probation condition that requires him to advise all members of the household in which he resides of his criminal history if minor females are living at or visiting the residence.

As a general matter, a sentencing court has broad authority to fashion conditions of probation so long as they are "reasonably related to the rehabilitation of the offender and the protection of the public and [are] not unduly restrictive of liberty."[2] But when a probation condition restricts an individual's constitutional rights, such as their right to familial association, that condition is subject to special scrutiny.[3] To survive special scrutiny, a probation condition must be both "reasonably related to the rehabilitation of the offender and the protection of the public" and "narrowly tailored to

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[1] We note that these same conditions were imposed as part of Louis's probation and Louis has not challenged them on appeal.

[2] *Johnson v. State*, 421 P.3d 134, 138-39 (Alaska App. 2018) (quoting *Thomas v. State*, 710 P.2d 1017, 1019 (Alaska App. 1985)).

[3] *Johnson*, 421 P.3d at 139 (citing *Roman v. State*, 570 P.2d 1235, 1241 (Alaska 1977)); *Simants v. State*, 329 P.3d 1033, 1038-39 (Alaska App. 2014); *Hinson v. State*, 199 P.3d 1166, 1174 (Alaska App. 2008); *see also Dawson v. State*, 894 P.2d 672, 680 (Alaska App. 1995) (recognizing that "[a] condition of probation restricting marital association plainly implicates the constitutional rights of privacy, liberty and freedom of association and . . . must be subjected to special scrutiny").

avoid unnecessary interference" with a defendant's constitutional rights.[4] The court must "affirmatively consider and have good reason for rejecting lesser restrictions."[5]

On appeal, Anthony first challenges three conditions of probation restricting his contact with his adoptive father. Specifically, these restrictions required Anthony to have his probation officer's permission to have contact with Louis, to have contact with convicted felons (a category that includes Louis), and to live in any particular residence, including Louis's house. On appeal, Anthony argues that the superior court erred in rejecting his proposed alternative of vacating the first condition entirely and striking the latter two as applied to Louis. We disagree. As the superior court noted, monitoring the relationship between Louis and Anthony was crucial to Anthony's rehabilitation and to the safety of the public. Deleting the monitoring conditions as applied to Louis would have undermined important goals of his probation.

Anthony also argues that the superior court erred when it failed to "affirmatively consider" other less restrictive alternatives, even though Anthony failed to propose any. In other words, Anthony is arguing that the duty to "affirmatively consider" less restrictive alternatives means that the superior court must, on its own initiative, invent other alternatives and then explain its reasons for rejecting them.

This understanding of the court's duty was recently rejected by our supreme court in *State v. Ranstead*.[6] In *Ranstead*, the supreme court held that the requirement that a sentencing court only impose probation conditions consistent with the Alaska Constitution "does not mean . . . that a sentencing court must make express findings for

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[4] *Johnson*, 421 P.3d at 139.

[5] *Id.*; *see also Peratrovich v. State*, 903 P.2d 1071, 1079 (Alaska App. 1995); *Dawson*, 894 P.2d at 680-81.

[6] *State v. Ranstead*, 421 P.3d 15 (Alaska 2018).

or otherwise justify each condition on the record[,] [n]or does it furnish an exception to the well-established principle that a 'defendant must raise an objection in the trial court in order to preserve that argument for appeal.'"[7]

Here, of course, Shelton did object to the proposed condition, but he did not ask the court to do what he now appears to be requesting on appeal — that is, he did not ask the court to invent other alternatives and then explain its reasons for rejecting them. Instead, Shelton proposed one specific alternative — deleting the conditions entirely, at least as applied to Louis — which the court considered and rejected. We therefore review for plain error Anthony's argument that the superior court should have affirmatively considered *other* alternatives.[8]

To show plain error on appeal, an appellant must show, among other things, that the error was obvious.[9] An error would be obvious in this context if it was "readily apparent that reasonable, lesser restrictions were available."[10] Shelton, however, has failed to point to any readily apparent, less restrictive alternatives — indeed, on appeal Shelton has failed to point to any alternatives at all (other than the one that was proposed and rejected below). We therefore conclude that Shelton has failed to show plain error.

Shelton also challenges one other condition of his probation: the condition requiring him to advise all members of the household in which he resides of his criminal history if minor females under the age of sixteen are living in or visiting that residence. Because this probation condition does not infringe on a constitutional right, we only review it to determine if it is "reasonably related to the rehabilitation of the offender and

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[7] *Id*. at 20.

[8] *Id*. at 23.

[9] *Id*. (citing *Adams v. State*, 261 P.3d 758, 764 (Alaska 2011)).

[10] *Powell v. State*, 2018 WL 3660226, at *3 (Alaska App. Aug. 1, 2018) (unpublished).

the protection of the public and [is] not unduly restrictive of liberty."[11] Here, the superior court explained that this condition was necessary to protect potential victims, an important goal of probation. We see no error in that determination.

The judgment of the superior court is AFFIRMED.

[11] *Johnson v. State*, 421 P.3d 134, 138-39 (Alaska App. 2018) (quoting *Thomas v. State*, 710 P.2d 1017, 1019 (Alaska App. 1985)).