

NOTICE

*Memorandum decisions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law, although it may be cited for whatever persuasive value it may have. See McCoy v. State, 80 P.3d 757, 764 (Alaska App. 2002).*

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

PAUL CARTER,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13980  
Trial Court No. 2KB-13-00761 CR

MEMORANDUM OPINION

No. 7097 — April 3, 2024

Appeal from the Superior Court, Second Judicial District,  
Kotzebue, Paul A. Roetman, Judge.

Appearances: Megan R. Webb, Assistant Public Defender and  
Samantha Cherot, Public Defender, Anchorage, for the  
Appellant. Eric A. Ringsmuth, Assistant Attorney General,  
Office of Criminal Appeals, Anchorage, and Treg R. Taylor,  
Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Wollenberg and Harbison,  
Judges.

Judge HARBISON.

Following a jury trial, Paul Carter was convicted of attempted first-degree  
murder for threatening to kill his sister, Katherine Carter, and then pointing a gun at her

and pulling the trigger.<sup>1</sup> He was also convicted of third-degree assault for conduct against his other sister, Eunice Carter, during the same incident.<sup>2</sup> The superior court imposed a composite sentence of 48 years with 15 years suspended (33 years to serve) and 10 years of probation.

On appeal, Carter claims that (1) certain statements made by the prosecutor during the rebuttal closing argument were improper and warrant reversal of his convictions; (2) the superior court erred in imposing two of the special conditions of probation; and (3) the judgment incorrectly indicates that Carter was convicted of attempted first-degree assault and third-degree assault of Katherine, despite the fact that these counts merged with the attempted first-degree murder conviction. For the reasons explained in this opinion, we affirm Carter's convictions, but we remand this case to the superior court with instructions to strike one of the challenged probation conditions and to correct the errors on the judgment.

#### *Background facts and proceedings*

The evidence presented at trial showed that Carter lived in Buckland with his extended family, including his sisters Eunice and Katherine, his parents, and Eunice's five children. During a family dinner in December 2013, Carter became angry with Katherine, swearing at her and threatening to kill her. Carter then slammed his hands down on the table, stood up, and went into the pantry. Eunice testified that while Carter was in the pantry, she heard the sound of a gun being cocked.

When Carter emerged from the pantry, he had a gun and pointed it at Katherine. Eunice moved across the room to intervene and pushed the gun upwards. As she did this, she heard a click, but the gun did not fire.

---

<sup>1</sup> AS 11.41.100(a)(1)(A) & AS 11.31.100(a).

<sup>2</sup> AS 11.41.220(a)(1)(A).

Eunice testified that their mother, Amy Carter, entered the room at around this time and managed to calm the situation. Eunice then called the authorities. The law enforcement officers who responded arrested Carter and seized the gun, which was still loaded with a live round in the chamber. Carter was transported from Buckland to Kotzebue the next day.

Carter was charged with one count of attempted first-degree murder, one count of attempted first-degree assault, and one count of third-degree assault for conduct directed at Katherine.<sup>3</sup> He was charged with one count of third-degree assault for conduct directed at Eunice.<sup>4</sup> The matter proceeded to trial. During the trial, Eunice and Katherine were called as witnesses and provided the above description of the incident. Additionally, Steve Murphy, a probation officer, testified that he had flown to Kotzebue in the same plane with Carter. During the flight, Carter told Murphy that he thought he would be charged with second-degree assault, and that he could be sentenced to 15 years because he “pointed a gun at someone and pulled the trigger.”

Amy Carter testified for the defense. She told the jury that she was in her bedroom at the time of the altercation, did not see Carter with a gun, and did not know that a gun was involved in the incident.

Carter’s ten-year-old nephew and his fourteen-year-old niece were also called as defense witnesses. Carter’s nephew did not see Carter “holding anything” during the incident. Carter’s niece, Daralynn Carter, testified that she was present in the kitchen when the incident occurred. According to Daralynn, Carter became angry with Katherine for “making jokes about [Carter’s] son.” Daralynn saw him “hit the table” and heard him say that he would kill Katherine. After this, Carter went into the pantry

---

<sup>3</sup> AS 11.41.100(a)(1)(A) & AS 11.31.100(a), AS 11.41.200(a)(1) & AS 11.31.100(a), and AS 11.41.220(a)(1)(A), respectively.

<sup>4</sup> AS 11.41.220(a)(1)(A).

where the guns were stored, but she did not see what he did in the pantry. Daralynn testified that “[Eunice] and Amy went to the pantry to try to stop him.”

Daralynn initially testified that she tried to get the other children to leave the room and that she left with them. However, after Carter’s attorney played a video recording of statements Daralynn made to a trooper, she clarified that she had remained in the room when the other children left, and that she had exited the room only *after* the incident. Daralynn testified that she did not see Carter with a gun, but she also stated that she left the room “when they got the gun from [Carter].” Daralynn testified that she had not discussed the case with her mother, Eunice, the day before trial.

Carter did not testify at trial, but his attorney argued that Eunice and Katherine lied about the incident with the gun because they wanted him out of the house. The jury rejected this defense, finding Carter guilty of all counts. The counts involving Katherine merged into a single conviction for attempted first-degree murder.

The court sentenced Carter to a composite term of 48 years with 15 years suspended (33 years to serve) and placed him on probation for 10 years. Among the conditions of probation recommended by the author of the presentence report was (1) a condition prohibiting Carter from having contact with Katherine and Eunice “without the prior written permission of the probation officer and [Katherine and Eunice]”; and (2) a condition requiring Carter to advise anyone with whom he has a “significant relationship” — relationships identified in AS 18.66.990(5)(A)-(G) — of his domestic violence history.<sup>5</sup> The superior court imposed all of the requested conditions.

---

<sup>5</sup> The relationships identified in AS 18.66.990(5)(A)-(G) are:

- (A) adults or minors who are current or former spouses;
- (B) adults or minors who live together or who have lived together;
- (C) adults or minors who are dating or who have dated;
- (D) adults or minors who are engaged in or who have engaged in a sexual relationship;

Carter filed a merit and sentence appeal, but his attorney later withdrew the merit appeal and proceeded only with an excessive sentence claim.<sup>6</sup> This Court affirmed his sentence.<sup>7</sup> Carter then filed an application for post-conviction relief, arguing that his appellate attorney had provided ineffective assistance by failing to pursue a merit appeal. The superior court granted this application and reinstated Carter's right to file a merit appeal.<sup>8</sup> Carter then filed the present appeal, challenging his conviction and two special conditions of his probation.

*Carter has not established that the prosecutor's closing argument requires reversal of his convictions*

Carter's first claim is that portions of the prosecutor's closing argument were plainly improper, requiring reversal of his convictions.

In order to evaluate Carter's claims of error, we must examine the prosecutor's argument and the surrounding context.<sup>9</sup> As we have explained, Carter's defense was that Eunice and Katherine "hatched [a] plan to remove [Carter] from the

- 
- (E) adults or minors who are related to each other up to the fourth degree of consanguinity, whether of the whole or half blood or by adoption, computed under the rules of civil law;
  - (F) adults or minors who are related or formerly related by marriage;
  - (G) persons who have a child of the relationship.

<sup>6</sup> See *Carter v. State*, 2020 WL 9174633, at \*1-2 (Alaska App. July 1, 2020) (unpublished).

<sup>7</sup> *Id.* at \*2.

<sup>8</sup> Superior Court File No. 2KB-21-00084 CI (Order dated Mar. 24, 2022).

<sup>9</sup> See *Rogers v. State*, 280 P.3d 582, 589-90 (Alaska App. 2012) (interpreting the prosecutor's comments during closing argument within the context of the defense theory and evidence presented at trial); *Lampley v. Anchorage*, 159 P.3d 515, 521 (Alaska App. 2007) (same).

house” because they believed he was “a bully” who “lashes out at everyone, saying he’s going to kill everybody,” and is “mean to the kids.”

During the defense attorney’s closing argument, the attorney pointed out the evidence that supported the defense theory that Eunice and Katherine were lying when they claimed that Carter had picked up a gun that evening. He reminded the jury that Eunice’s testimony was not completely consistent with Katherine’s testimony.<sup>10</sup> The attorney noted that the gun had not been sent to the “crime lab,” and he argued that the State lacked physical evidence establishing that Carter actually held the gun or attempted to fire the gun. The attorney also argued that Daralynn had been pressured by Eunice to testify falsely, asserting that Daralynn’s “statements at trial were different from what she’d said to law enforcement and suggested that the child’s loyalties were with her mother, Eunice, rather than with him, which might have caused her to alter her version of events.” The attorney also suggested that Daralynn was motivated to testify falsely in order to keep her mother from getting into trouble for lying about the incident.

In closing, the prosecutor argued that “none of the evidence” supported Carter’s defense. In rebuttal, the prosecutor told the jury that Eunice is “a good mother,” and that he “would hope” that she had talked to her children about the incident. The prosecutor suggested that if Eunice had spoken to her children about the incident, it likely was only to emphasize the importance of telling the truth. After this, the prosecutor explained why the evidence supported the State’s version of the incident, highlighting the evidence that was inconsistent with Carter’s defense.

On appeal, Carter contends that the prosecutor’s argument was improper because it impermissibly vouched for Eunice’s credibility, played on the jury’s sympathy, presented facts that were not in evidence, and disparaged the legitimacy of

---

<sup>10</sup> Eunice said Carter cocked the gun in the pantry, but Katherine said Carter cocked it when he was standing in the doorway of the pantry, pointing the gun at her. Neither could describe how Carter held the gun or how they managed to get the gun away from him.

his defense. Because Carter did not object to the prosecutor’s closing argument, he must show plain error.<sup>11</sup>

Plain error is an error that “(1) was not the result of intelligent waiver or a tactical decision not to object; (2) was obvious; (3) affected substantial rights; and (4) was prejudicial.”<sup>12</sup> We have reviewed the prosecutor’s closing argument, and we agree with Carter that the prosecutor’s suggestion that he viewed Eunice as “a good mother” and that he had a favorable opinion of how she interacted with her children in advance of their testimony was improper. However, the vast majority of the closing argument was unobjectionable and was properly focused on the evidence that had been presented at trial.

We further conclude that, even though the remarks were improper, they were not prejudicial. Almost all the evidence presented during Carter’s trial supported the State’s claim that Carter threatened his family, grabbed a gun, and pointed it at his sister. Daralynn’s testimony was equivocal and confusing, and did little to advance Carter’s case. The only witness who offered conflicting testimony was Carter’s mother, but her testimony was merely that she did not see a firearm or know that a firearm was involved. And in addition to testimony from Carter’s family members about the incident, the State presented evidence that when Carter was traveling from Buckland to Kotzebue, he told Officer Murphy that he was “looking at 15 years” because he had “pointed a gun at someone and pulled the trigger.”

Given this evidence, Carter has not shown a reasonable probability that the challenged statements from the prosecutor’s closing argument affected the outcome of this case.<sup>13</sup> We accordingly reject his claim of plain error.

---

<sup>11</sup> See *Adams v. State*, 261 P.3d 758, 764 (Alaska 2011).

<sup>12</sup> *Id.*

<sup>13</sup> See *Hess v. State*, 435 P.3d 876, 882 (Alaska 2018); *Adams*, 261 P.3d at 773.

*The superior court erred in imposing a condition of probation that prevented Carter from having contact with Eunice and Katherine without permission of both his probation officer and his sisters*

Carter's next claim is that the superior court erred in imposing Special Condition of Probation No. 6, which prohibits Carter from having contact with Katherine and Eunice without the prior written permission of both his probation officer and his sisters. Carter notes that, during the sentencing hearing, Katherine and Eunice told the court they wanted to have contact with him. Despite these assertions, the court ordered, as a special condition of probation, that Carter "shall have no contact with his victims [Katherine and Eunice] without the prior written permission of the probation officer and the victims." The court did not consider any alternatives to the condition. Instead, the court reasoned that the probation condition would not be applicable until "down the road" when Carter is released from custody. The court also stated that it did not anticipate that the condition would prohibit Katherine and Eunice from having contact with Carter while he was in custody, and it explained to Carter that "[t]his condition really is when you're out of custody."

A probation condition must reasonably relate to the sentencing principles "while not unduly restricting the offender's liberty."<sup>14</sup> Probation conditions that restrict a defendant's right to familial contact are subject to special scrutiny<sup>15</sup> and must be "narrowly tailored to avoid unnecessary interference with the constitutional right at issue."<sup>16</sup> Before imposing such a condition, the court must "affirmatively consider, and

---

<sup>14</sup> *Glasgow v. State*, 355 P.3d 597, 600 (Alaska App. 2015); *see also State v. Pulusila*, 467 P.3d 211, 219 (Alaska 2020); Alaska Const. art. I, § 12.

<sup>15</sup> *Simants v. State*, 329 P.3d 1033, 1038 (Alaska App. 2014).

<sup>16</sup> *Glasgow*, 355 P.3d at 600 (citing *Simants*, 329 P.3d at 1038-39; *Dawson v. State*, 894 P.2d 672, 680-81 (Alaska App. 1995)).



have good reason for rejecting, any less restrictive alternatives” to the condition.<sup>17</sup>

Here, the record demonstrates that the superior court never considered any alternatives to the challenged probation condition and did not narrowly tailor the condition to avoid interference with Carter’s right to familial association. The challenged condition restricts Carter’s right to contact with his two sisters, both of whom expressed that they wanted contact with Carter. Furthermore, the parties have identified a Department of Corrections policy that allows the Department, in its discretion, to restrict a person from visiting a prisoner when “a court order precludes visitation during probation.”<sup>18</sup> For these reasons, we conclude that we must remand this case to the superior court so that it may revisit this condition.

*The superior court did not err by imposing a probation condition that requires Carter to notify persons with whom he has a significant relationship of his domestic violence history*

Carter’s next claim is that the superior court erred by imposing Special Condition of Probation No. 12, which requires him to notify “all persons with whom he has a significant relationship” — which the court defined as persons listed in AS 18.66.990(5)(A)-(G) — of his “domestic violence history.” Because Carter did not object to this condition at sentencing, he must demonstrate plain error.

In *Smith v. State*, we explained that the term “significant relationship” provided constitutionally inadequate notice of when an association with another person becomes sufficiently “significant” that a probationer will be subject to prosecution for failing to disclose their criminal history to the person.<sup>19</sup> But in the present case, the

---

<sup>17</sup> *Id.*

<sup>18</sup> Alaska Dep’t of Corr., *Policies and Procedures*, 810.02(VII)(E)(1)(viii) (2013), <https://doc.alaska.gov/pnp/pdf/810.02.pdf>.

<sup>19</sup> *Smith v. State*, 349 P.3d 1087, 1095 (Alaska App. 2015) (citing *Whiting v. State*, 2014 WL 706268, at \*2-3 (Alaska App. Feb. 19, 2014) (unpublished)).

superior court provided a definition of “significant relationship” by referring to the following categories of people enumerated in AS 18.66.990(5):

- (A) adults or minors who are current or former spouses;
- (B) adults or minors who live together or who have lived together;
- (C) adults or minors who are dating or who have dated;
- (D) adults or minors who are engaged in or who have engaged in a sexual relationship;
- (E) adults or minors who are related to each other up to the fourth degree of consanguinity, whether of the whole or half blood or by adoption, computed under the rules of civil law;
- (F) adults or minors who are related or formerly related by marriage;
- (G) persons who have a child of the relationship[.]

On appeal, Carter contends that the condition is overbroad. According to Carter, compliance with the condition is unrealistic because of the large number of people included within this definition, placing him at substantial risk his probation will be revoked and he will be remanded into custody.

In *Nitz v. State*, this Court rejected an argument that several probation conditions were overbroad, reasoning that a common sense reading of the conditions was sufficient to provide the defendant with fair notice of the prohibited conduct and that there was no realistic possibility that the conditions would encourage arbitrary enforcement.<sup>20</sup> We conclude that the same is true here. The terms used in AS 18.66.990(5) are sufficient to describe the people who Carter must inform about his domestic violence history and thus provide fair notice to Carter.

We also reject Carter’s contention that it will be difficult for him to comply with this condition and that the condition imposes an unfair burden on him. We

---

<sup>20</sup> *Nitz v. State*, 745 P.2d 1379, 1381-82 (Alaska App. 1987).

do not interpret the condition as applying retroactively, such that Carter must provide disclosures to all the people identified in AS 18.66.990(5), even if he is no longer in a qualifying relationship with them. Here, the requirement is that Carter must inform those with whom he “has” such a relationship. Because the probation condition applies only to his current relationships (and to those that develop in the future), Carter will have a sufficient opportunity to provide the needed disclosure. We accordingly reject this claim of plain error.

*The errors on the judgment must be corrected*

The judgment contains two errors. First, the judgment incorrectly indicates that Carter was convicted of attempted first-degree assault and third-degree assault of Katherine, despite the fact that those counts merged with the attempted first-degree murder conviction.<sup>21</sup> Second, the judgment incorrectly states that these counts merged only “for purposes of sentencing.”<sup>22</sup>

Under Alaska law, “when a jury finds a defendant guilty of two counts that merge, the merger results both in a single sentence and in a single conviction, based on the jury’s two verdicts.”<sup>23</sup> On remand, the superior court shall correct the judgment.<sup>24</sup>

---

<sup>21</sup> See *Nicklie v. State*, 402 P.3d 424, 426 (Alaska App. 2017) (“[W]hen a defendant is found guilty of counts that must merge, the merger results in a *single* conviction of record (and thus a single sentence).”); see also *Garhart v. State*, 147 P.3d 746, 752-53 (Alaska App. 2006) (holding that although the State may charge and try the defendant with multiple counts for the same conduct, the double jeopardy clause requires the counts to merge).

<sup>22</sup> See *Nicklie*, 402 P.3d at 426 (explaining that because of the double jeopardy clause, “Alaska law does not recognize the existence of merger ‘for sentencing purposes only’”).

<sup>23</sup> *Smith v. State*, 426 P.3d 1162, 1167 (Alaska App. 2018).

<sup>24</sup> We note that Carter could have obtained this relief more expeditiously by filing a motion with the superior court.

*Conclusion*

We remand this matter to the superior court with instructions to reconsider Special Condition of Probation No. 6 and to correct the errors in the judgment. In all other respects, the judgment of the superior court is AFFIRMED.