

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

THOMAS VILLA SALCIDO,
Appellant.

No. 2 CA-CR 2019-0206
Filed November 9, 2020

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Pima County
No. CR20152242001
The Honorable Danelle B. Liwski, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Michael T. O'Toole, Acting Section Chief Counsel
By Amy Pignatella Cain, Assistant Attorney General, Tucson
Counsel for Appellee

James Fullin, Pima County Legal Defender
By Robb P. Holmes, Assistant Legal Defender, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Judge Brearcliffe authored the decision of the Court, in which Presiding Judge Staring and Chief Judge Vásquez concurred.

BREARCLIFFE, Judge:

¶1 Thomas Salcido appeals from the trial court’s order finding a probation violation and imposing intensive supervised probation. Salcido specifically challenges the validity of a probation regulation imposed by his probation officer. We affirm.

Factual and Procedural Background

¶2 “We view the facts in the light most favorable to sustaining the superior court’s findings.” *State v. Vaughn*, 217 Ariz. 518, n.2 (App. 2008). In January 2016, Salcido pleaded guilty to both aggravated assault with a deadly weapon or dangerous instrument and kidnapping, each designated as a domestic violence offense. The charges arose from Salcido’s use of a knife in the assault of a victim with whom he had lived in an intimate relationship. The trial court sentenced Salcido to 3.5 years of imprisonment on the aggravated assault conviction, followed by five years of supervised probation on the kidnapping conviction. At his sentencing, in April 2016, Salcido signed conditions of supervised probation and a domestic violence supervised probation addendum (“DV conditions”).

¶3 Among Salcido’s conditions of probation, he agreed to “comply with any written directive” of the Adult Probation Department (APD) “to enforce compliance with the conditions of probation”; provide the APD “safe, unrestricted access to his residence and receive prior approval of the APD before changing his residence”; “reside in a residence approved by the APD”; and “abide by” the DV conditions. Within the DV conditions, Salcido agreed to comply with “all lawful orders of the probation officer.”¹ The following week, on demand of the APD, Salcido

¹Other than asserting that the regulation is invalid, Salcido does not argue that the regulation at issue is otherwise unlawful.

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signed regulations of his probation, which required him to “immediately disclose all new intimate, sexual, or romantic encounters and/or partners, along with the person’s contact information, to the probation officer” and “not live with any intimate partner without prior written authorization from the probation officer.” The regulations also required Salcido disclose to any new romantic partner the details of his domestic violence conviction. Salcido’s probation officer gave him copies of the regulations and reviewed the terms with him.

¶4 In July 2019, Salcido’s probation officer filed a petition to revoke probation, claiming that earlier that month, Salcido violated his conditions of probation when he committed domestic violence/assault and failed to report a new romantic relationship. Following an evidentiary hearing, the trial court found that the state failed to prove by a preponderance of the evidence that Salcido committed domestic violence assault, but found that the state had proved that Salcido failed, among other violations not challenged on appeal, to report a new romantic relationship. At the disposition hearing, the court continued Salcido on probation, but placed him on intensive probation supervision. This appealed followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, 13-4033(A).

Analysis

¶5 Salcido argues on appeal, as he did below, that the trial court erred in finding a probation violation because the APD regulation that he report any new romantic relationship “lacked a reasonable nexus to the court-ordered conditions of probation.” “We will uphold a trial court’s finding that a probationer has violated probation unless the finding is arbitrary or unsupported by any theory of evidence.” *State v. Thomas*, 196 Ariz. 312, ¶ 3 (App. 1999). We review interpretation of court rules *de novo*. *State v. Godoy*, 244 Ariz. 327, ¶ 7 (App. 2017).

¶6 A trial court has the authority to impose conditions of probation “as the law requires and the court deems appropriate.” A.R.S. § 13-901(A). A “condition” of probation is “any court-ordered term of probation.” Ariz. R. Crim. P. 27.1(a)(1). “The sentencing court may impose conditions on a probationer that promote rehabilitation and protect any victim.” Ariz. R. Crim. P. 27.1(b). A court-imposed condition of probation is valid if there is “a reasonable nexus between the conditions imposed and the goals to be achieved by the probation.” *State v. Davis*, 119 Ariz. 140, 142 (App. 1978). As a general matter, conditions of probation are intended to

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protect the public and to facilitate rehabilitation. *See State v. Kessler*, 199 Ariz. 83, ¶ 21 (App. 2000).

¶7 A “regulation” is “any specific instruction[] or directive[] given by a probation officer to a probationer to implement a court-imposed condition of probation.” Ariz. R. Crim. P. 27.1(a)(2). “The probation officer . . . may impose regulations that are necessary to implement the court’s conditions and that are consistent with them.” Ariz. R. Crim. P. 27.1(b). In accord with Rule 27.1(b), then, in judging the validity of a probation regulation, we must determine whether the questioned regulation is necessary to implement a condition or conditions of probation and is consistent with the conditions of probation.

¶8 Salcido’s probation was imposed following a kidnapping/domestic violence conviction. Salcido’s probation officer testified that the challenged regulation was imposed to protect a probationer’s “new partners” and that the APD began requiring probationers to notify them of a new intimate partner “in an effort to combat” the circumstance that arose when probationers developed a relationship with a new partner, failed to disclose that partner, and then committed a new offense. Thus, she testified the regulation had been imposed because of “an issue of third party protection” and further explained that since this regulation was instituted, the APD had seen new offenses decrease, compliance increase; and the APD could help ensure that “the new partners are safe.”

¶9 Salcido asserts that the requirement that he disclose any new romantic or intimate relationship “restricts his ability to freely choose who he lives with and associates intimately with.” That is not the case; the regulation did not require the probation officer to “approve” any new relationship but merely to be notified of its existence. That information allows the APD to monitor Salcido’s contacts, ensure that any members of the public with whom he may engage in an intimate relationship are protected, and, in the course of doing so, assist in his rehabilitation by preventing Salcido from committing domestic violence yet again.² Because

²As to controlling with whom he lives, the probation regulations do bar Salcido from “cohabit[ing] with any intimate partner unless [the partner has] met with the probation officer and signed a waiver of liability.” However, because no exemplar of such a waiver is in the record on appeal, we can only speculate as to its purpose and scope. Any number of reasonable purposes unrelated to the probationer’s particular romantic engagements may be served by such a waiver, including providing notice

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the general purposes of conditions of probation are to prevent recidivism – in a case such as this, a new offense of domestic violence – and to protect the public in doing so, the subject regulation appears consistent with the conditions of probation and necessary to implement them.

Disposition

¶10 For the foregoing reasons, we affirm the order finding that Salcido violated his probation and the imposition of intensive supervised probation.

to the partner of the APD's power to perform a warrantless search of the petitioner's home – even a shared home. Also absent from the record is evidence of any consequences to the probationer if the romantic partner refuses to sign the waiver. Even so, because Salcido failed to disclose his partner altogether, whether or not any requirement beyond disclosure is unlawful is not at issue here.