IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

TASHA KIRK A/K/A TASHA LAWSON,

Appellant,

v. Case No. 5D19-3386

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed September 18, 2020

Appeal from the Circuit Court
for Marion County,
Lisa D. Herndon, Judge.

James S. Purdy, Public Defender, and Glendon G. Gordon, Jr., Assistant Public Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Kristen Davenport, Assistant Attorney General, Daytona Beach, for Appellee.

COHEN, J.

Tasha Kirk appeals the denial of her motion to correct sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). Kirk argues that based upon section 948.06(2)(f)1., Florida Statutes (2019), the trial court was required to modify or continue her probationary term, despite the fact that this was her third violation of probation.

The statute provides in pertinent part:

> (f) 1. Except as provided in subparagraph 3. or upon waiver by the probationer, the court shall modify or continue a probationary term upon finding a probationer in violation when any of the following applies:
>
> a. The term of supervision is probation.
>
> b. The probationer does not qualify as a violent felony offender of special concern, as defined in paragraph (8)(b).
>
> c. The violation is a low-risk technical violation, as defined in paragraph (9)(b).
>
> d. The court has not previously found the probationer in violation of his or her probation pursuant to a filed violation of probation affidavit during the current term of supervision. A probationer who has successfully completed sanctions through the alternative sanctioning program is eligible for mandatory modification or continuation of his or her probation.
>
> 2. Upon modifying probation under subparagraph 1., the court may include in the sentence a maximum of 90 days in county jail as a special condition of probation.
>
> 3. Notwithstanding s. 921.0024, if a probationer has less than 90 days of supervision remaining on his or her term of probation and meets the criteria for mandatory modification or continuation in subparagraph 1., the court may revoke probation and sentence the probationer to a maximum of 90 days in county jail.

§ 948.06(2)(f), Fla. Stat. (emphasis added).

Kirk's argument presents an interesting issue: whether the term "any" in section 948.06(2)(f)1. requires the probationer to meet only one or all the listed conditions. While the dissent observes that the appeal is moot, this issue is arising statewide and is likely to reoccur. As a result, the issue merits discussion.

Reading the statute literally and giving the wording its plain and usual meaning, Kirk's position is correct, as her circumstances meet at least one of the conditions.[1] See A.R. Douglass, Inc. v. McRainey, 137 So. 157, 159 (Fla. 1931) ("When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning."). Indeed, the statute by its terms would require the modification or continuation of probation of all who have violated probation and would limit the sentencing of those on probation to a maximum of ninety days in county jail, even in the face of conflicting statutes.[2] If the Legislature intended that only one of the conditions need be met, sub-subparagraph a., which requires only that the term of supervision is probation, would effectively nullify sub-subparagraphs b., c., and d. of the statute.

While we suspect that this was not the outcome the Legislature intended, we have often noted that we look to the language of a statute, not the legislative intent. See State v. Sousa, 903 So. 2d 923, 928 (Fla. 2005) ("The fundamental rule of construction in determining legislative intent is to first give effect to the plain and ordinary meaning of the language used by the Legislature."). However, for this statute to make any sense, it must be read to require a probationer to meet all the conditions of the statute before he or she may benefit from it.

[1] Under section 948.06(2)(f)1.a., Kirk's term of supervision was probation.

[2] The Anti-Murder Act, section 948.06(8), Florida Statutes (2019), is a primary example.

Two rules of statutory construction justify that position. The first is the doctrine of *in pari materia*, which provides that we should view statutes in a manner that would harmonize the applicable law. See Deen v. Wilson, 1 So. 3d 1179, 1182 (Fla. 5th DCA 2009). The second, referred to as the absurdity doctrine, is that "a literal interpretation of the language of a statute need not be given when to do so would lead to an unreasonable or ridiculous conclusion." Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984) (citing Johnson v. Presbyterian Homes of Synod of Fla., Inc., 239 So. 2d 256 (Fla. 1970)). Given the outcomes invited by Kirk's interpretation, these two principles compel the conclusion that section 948.06(2)(f)1. requires all conditions to be met, rather than just one. While utilizing a slightly different approach, this is the same conclusion reached in Owens v. State, 45 Fla. L. Weekly D2011 (Fla. 1st DCA Aug. 25, 2020).

Where we diverge from the court in Owens is in its finding that "the use of 'any' rather than 'all' before the list of four conditions in subsection 948.06(2)(f)1. creates an ambiguity . . . ." Id. It appears that finding is used to justify the application of the absurdity doctrine. While in complete agreement with Owens that the use of "any" creates an absurd result, there is nothing ambiguous about it.

Rather than finding an ambiguity, we should recognize that despite the lack of ambiguity, this statute is ripe for the utilization of the absurdity doctrine. Under that doctrine, a "provision may be either disregarded or judicially corrected as an error (when the correction is textually simple) if failing to do so would result in a disposition that no reasonable person could approve." Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 235–39 (2012).

Certainly, the use of the absurdity doctrine should be exceptional. It is not intended to allow courts to substitute their judgment for that of the Legislature. However, viewing the statute as a whole, it is clear that the Legislature intended that all conditions be met before a probationer obtains its benefits.

We commend this issue to the State Legislature with the suggestion that it consider amending the statute.

AFFIRMED.

EDWARDS, J., concurs.
TRAVER, J., dissents, with opinion.

TRAVER, J., dissenting.

I respectfully dissent. Appellant has served her sentence and is no longer on probation. Accordingly, her appeal is moot, and we should dismiss it. See Miller v. State, 79 So. 3d 209, 211 (Fla. 1st DCA 2012) (citing Vazquez v. State, 930 So. 2d 860, 861 (Fla. 2d DCA 2006)).