

**IN THE COURT OF APPEALS OF IOWA**

No. 9-328 / 08-1129  
Filed May 29, 2009

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**LUKAS BRODERICK HEMPHILL,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Dallas County, Virginia Cobb,  
District Associate Judge.

Lukas Hemphill appeals from the district court's order extending the term  
of his probation. **AFFIRMED IN PART, REVERSED IN PART, AND  
REMANDED WITH DIRECTIONS.**

Angela Y. Gruber-Gardner, Johnston, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney  
General, and Wayne Reisetter, County Attorney, for appellee State.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

**DOYLE, J.**

Lukas Hemphill appeals from the district court's order extending the term of his probation. He contends the district court lacked authority to extend his probation and thus erred. Additionally, Hemphill argues he had a right to refuse probation and demand imposition of the original sentence. We affirm in part, reverse in part, and remand with directions.

***I. Background Facts and Proceedings.***

The following facts are undisputed: On January 17, 2007, the State filed a juvenile delinquency petition charging Hemphill with operating a vehicle while intoxicated (OWI), possession of a controlled substance, and possession of alcohol under the legal age. Hemphill agreed to be waived to adult court, and the State dismissed all charges against Hemphill except the OWI charge. A plea agreement was reached between Hemphill and the State, whereby Hemphill agreed to plead guilty to OWI in violation of Iowa Code section 321J.2 (2007), a serious misdemeanor, in exchange for the State's recommendation that Hemphill be sentenced to forty-five days in jail with all but two days suspended, minimum fines and surcharges, one year probation, completion of a substance abuse evaluation, and a course for drinking drivers. On November 16, 2007, the district court entered judgment and sentenced Hemphill to thirty days in jail with credit for two days served and the remainder suspended, and placed Hemphill on probation for one year.<sup>1</sup> The court also ordered Hemphill to pay a fine and complete and follow any recommendation of the substance abuse evaluation.

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<sup>1</sup> Pursuant to Iowa Code section 907.7, the court had discretion to place Hemphill on probation for a term not to exceed two years for his serious misdemeanor conviction.

On approximately February 18, 2008, Hemphill's probation officer filed a probation violation report, alleging numerous probation violations, including that Hemphill failed to refrain from illegal drug use and abide by all orders of the court. At the probation revocation proceedings Hemphill stipulated that he violated the terms of his probation as set forth in the probation violation report. The court found Hemphill in contempt and sentenced him to five days in jail, with credit for time served since his arrest on February 18, 2008.

On April 17, 2008, Hemphill's probation officer filed a second probation violation report, alleging numerous probation violations. At the probation revocation proceedings Hemphill again stipulated that he violated the terms of his probation as set forth in the report. Hemphill's probation officer recommended revoking Hemphill's probation. The State recommended that the court hold Hemphill in contempt and order him to serve a thirty-day jail sentence, as well as continuing Hemphill's probation and extending the probation one year beyond the probation's original expiration date. Hemphill did not want probation and requested that he serve out his original thirty-day jail sentence.

The court found Hemphill in contempt and sentenced him to thirty days in jail. Additionally, the court continued and extended his probation for an additional one year. Hemphill appeals.<sup>2</sup>

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<sup>2</sup> After the State filed a motion to dismiss direct appeal, the supreme court entered an order finding Hemphill filed a direct appeal from a contempt order. A contempt ruling is not appealable as a matter of right, and such an order can only be reviewed by filing a petition for writ of certiorari. Finding the thirty-day contempt sentence within the court's discretion, the supreme court denied the petition for writ of certiorari regarding the jail sentence. As to Hemphill's appeal of the additional year of probation, the supreme court ruled the district court had discretion to modify Hemphill's probation and that the modification was appealable as a matter of right.

## ***II. Scope and Standards of Review.***

We review issues of statutory interpretation and application for errors of law. Iowa R. App. P. 6.4; *State v. Garcia*, 756 N.W.2d 216, 219 (Iowa 2008). “The primary purpose of statutory construction is to determine legislative intent.” *State v. McCoy*, 618 N.W.2d 324, 325 (Iowa 2000).

## ***III. Discussion.***

On appeal, Hemphill contends the district court lacked statutory authority to extend his probation. Additionally, Hemphill argues he had a right to refuse probation and demand imposition of the original jail sentence.

### ***A. Extension of Probation.***

If a probation violation is established,

*[T]he court may continue the probation . . . with or without an alteration of the conditions of probation . . . . If the defendant is an adult . . . the court may hold the defendant in contempt of court and sentence the defendant to a jail term while continuing the probation . . . , order the defendant to be placed in a violator facility established pursuant to section 904.207 while continuing the probation . . . status, or revoke the probation . . . and require the defendant to serve the sentence imposed or any lesser sentence, and, if imposition of sentence was deferred, may impose any sentence which might originally have been imposed.*

Iowa Code § 908.11(4) (emphasis added). Hemphill acknowledges that section 908.11(4) permitted the district court to sentence him to a jail term while continuing his probation for violating the conditions of his probation. However, he contends the plain language of the section did not allow the district court to extend the term of his probation. We agree.

When confronted with the task of determining the meaning of a statute,

*[O]ur primary goal is to give effect to the intent of the legislature. That intent is gleaned from the language of the statute as a whole,*

not from a particular part only. Because we presume the legislature intends a just and reasonable result, we interpret statutes to avoid impractical or absurd results.

*In re Detention of Betsworth*, 711 N.W.2d 280, 283 (Iowa 2006) (internal quotations and citations omitted).

The polestar of statutory interpretation is the intent of the legislature. We seek to ascertain and effectuate the true legislative intent. We must not only examine the language of the statute, but also its underlying purpose and policies, as well as the consequences stemming from different interpretations. In doing so, we must construe the statute in its entirety.

*State v. Carpenter*, 616 N.W.2d 540, 542 (Iowa 2000) (citations omitted); see also *Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Mobil Oil Corp.*, 606 N.W.2d 359, 363 (Iowa 2000) (“In interpreting the statute, our ultimate goal is to ascertain and give effect to the intent of the legislature. We look to both the language and the purpose behind the statute.”) (citations omitted).

Section 908.11(4) does not expressly permit a court to extend the length of one’s probation when a probation violation is established.<sup>3</sup> However, the first

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<sup>3</sup> We note that several other jurisdictions have statutes that do expressly provide for the extension of probation in such situations. See, e.g., Ind. Code § 35-38-2-3(g) (2009) (“If the court finds that the person has violated a condition, the court may . . . [e]xtend the person’s probationary period for not more than one (1) year beyond the original probationary period.”); Miss. Code Ann. § 47-7-37 (2009) (“The period of probation shall be fixed by the court, and may at any time be extended or terminated by the court, or judge in vacation.”); Mo. Ann. Stat. § 559.036(3) (West 2009) (“If the defendant violates a condition of probation . . . , the court may continue him on the existing conditions, with or without modifying or enlarging the conditions or extending the term . . . .”); Neb. Rev. St. § 29-2268(2) (2009) (“If the court finds that the probationer did violate a condition of his probation . . . , the court may order that . . . [t]he probationer’s term of probation be extended . . . .”); N.C. Gen. Stat. Ann. § 15A-1345(e) (West 2009) (“Before revoking or extending probation, the court must . . . hold a hearing to determine whether to revoke or extend probation . . . .”); N.D. Cent. Code § 12.1-32-06.1(5) (2009) (“In felony cases, in consequence of violation of probation conditions, the court may impose an additional period of probation not to exceed five years.”)

sentence of section 908.11(4) states probation may be continued with or without an alteration of the conditions of probation. The standards for conditions and length of probation are separately set forth in Iowa Code chapter 907.

Probationers are subject to the *conditions* established by the judicial district department of correctional services subject to the approval of the court, and *any additional reasonable conditions* which the court or district department *may impose to promote rehabilitation of the defendant or protection of the community*. *Conditions may include* but are not limited to adherence to regulations generally applicable to persons released on parole and including requiring unpaid community service . . . .

Iowa Code § 907.6 (emphasis added). There is no language in section 907.6 to indicate that the length of one's probation is a condition of the probation. As the statute explains, the conditions of probation imposed are generally related to the "adherence to regulations generally applicable to persons released on parole" and to "promote rehabilitation of the defendant or protection of the community."

The standards for length of probation are set forth in section 907.7. In determining the length of probation, the sentencing court must consider what period of time is most likely to provide maximum opportunity for rehabilitation, and allowance for sufficient time to determine whether or not the rehabilitation has been successful and to protect the community from further offenses by the defendant and others. There is no language in section 907.7 to indicate that the length of one's probation is a condition of the probation. Consequently, we conclude the length of one's probation is not a condition of probation that can be altered pursuant to section 908.11(4).

We next look at the definition of "continue." The word "continue" is often used to mean an extension. See New World Dictionary 308 (2d ed. 1974)

(defining “continue” to mean, among other definitions, “to go on or extend”). It can also mean “[t]he act of keeping up, maintaining, or prolonging.” Black’s Law Dictionary 316 (7th ed. 1999) (defining the noun form “continuance”). Thus, to continue probation may mean maintaining the existing term or extending the existing term and is thus ambiguous.

Rules of statutory construction can aid us in interpreting a statute to determine legislative intent when a statute is ambiguous. *Marcus v. Young*, 538 N.W.2d 285, 289 (Iowa 1995). In examining the issue at hand, we are guided by the maxim “expressio unius est exclusio alterius,” meaning the “expression of one thing is the exclusion of another.” *Id.* (citations omitted). “This expresses the well-established rules of statutory construction that legislative intent is expressed by omission as well as by inclusion, and the express mention of one thing implies the exclusion of others not so mentioned.” *Id.* (citations omitted).

Iowa Code section 907.7(3), which concerns the length of probation, expressly provides that a court “may subsequently reduce the length of the probation if the court determines that the purposes of probation have been fulfilled . . . .” However, there is no corresponding language in the statute permitting a court to extend the length of probation for any reason.

Additionally, section 910.4, relating to restitution as a condition of probation, explicitly provides that “[i]f an offender fails to comply with restitution requirements during probation, the court may hold the offender in contempt, revoke probation, or *extend the period of probation.*” Iowa Code § 910.4(1)(b) (emphasis added). There is no such corresponding language contained in section 908.11(4). The fact that the legislature chose to expressly allow for the

extension of probation in cases of restitution violations, but did not expressly allow for the extension of probation in cases of probation violations, evidences the legislature's intent that probation extensions are not authorized for probation violations. We therefore conclude section 908.11(4) does not allow a court to extend the length of probation, over a defendant's objection, after the defendant has violated the conditions of his or her probation. Consequently, we find the district court exceeded its authority in extending Hemphill's probation for an additional year. We reverse and remand on this issue with directions to strike from the district court's May 29, 2008 order the provision which extends Hemphill's probation for an additional period of one year.

***B. Right to Refuse Probation.***

Hemphill also contends he had a right to refuse probation altogether and demand imposition of the original sentence when he deemed the probation conditions to be too onerous. Under the facts of this case, we disagree.

Here, Hemphill was charged with OWI in violation of Iowa Code section 321J.2, a serious misdemeanor. In sentencing a defendant on a serious misdemeanor conviction, a court may "order imprisonment not to exceed one year." Iowa Code § 903.1(1)(b). Rather than proceed to trial, Hemphill agreed to the State's plea agreement where he would plead guilty to the serious misdemeanor in exchange for the State's recommendation of a reduced sentence, probation, and a substance abuse evaluation and treatment if recommended. Hemphill agreed to these terms and did not object or refuse probation as a term of his sentencing. The court then sentenced Hemphill to probation.



Hemphill cites several cases from other jurisdictions for the proposition that a defendant may refuse probation and choose to serve the sentence if the defendant believes the conditions of his probation are more onerous than the potential sentence. See, e.g., *Swezey v. State*, 167 P.3d 79, 80 (Alaska Ct. App. 2007) (“the defendant can refuse probation if he deems the terms too onerous.”); *State v. McCool*, 87 P.3d 291, 294 (Idaho 2004) (“A defendant may decline probation when he [or she] deems its conditions too onerous, and demand instead that he [or she] be sentenced by the court.”). However, none of the cases Hemphill cites relates to rejection of the conditions of probation after the conditions have been violated. The cases relied upon by Hemphill all involve defendants who rejected probation at the time of sentencing. Upon our review of the case law, we find no support for Hemphill’s argument that he may reject probation after first agreeing to it and then violating its terms. We conclude Hemphill did not have the right to refuse probation under these facts and consequently find no error.

#### ***IV. Conclusion.***

We conclude Hemphill did not have the right to refuse probation under these facts. We further conclude the district court lacked statutory authority to extend Hemphill’s probation, over Hemphill’s objection. We therefore affirm in part, reverse in part, and remand with directions to strike from the district court’s May 29, 2008 order the provision which extends Hemphill’s probation for an additional period of one year.

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH DIRECTIONS.**