This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2018).

STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0647

State of Minnesota,
Respondent,

vs.

Steven Leon Reyes,
Appellant.

Filed January 13, 2020
Affirmed in part, reversed in part, and remanded
Bratvold, Judge

Beltrami County District Court
File No. 04-CR-18-3836

Keith Ellison, Attorney General, St. Paul, Minnesota; and

David L. Hanson, Beltrami County Attorney, Ashley A. Nelson, Assistant County Attorney, Bemidji, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Christen Chapman, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Bratvold, Judge; and Slieter, Judge.

U N P U B L I S H E D   O P I N I O N

BRATVOLD, Judge

Appellant Steven Leon Reyes seeks review of his final judgment of conviction for felony domestic assault under Minn. Stat. § 609.2242, subd. 4 (2018), and challenges the

probation conditions imposed by the district court during sentencing. Because we conclude the district court did not err when it failed to specify the legal standard required for the search condition, we affirm in part. We also affirm the district court's decision to require Reyes to submit to random chemical testing as directed by probation. But because neither Minnesota caselaw nor statute authorize a district court to impose probation conditions that are supervised by law enforcement, we reverse in part and remand for the district court to clarify that Reyes need not submit to random chemical testing as directed by law enforcement.

FACTS

In November 2018, Reyes intentionally hit the victim, who is the mother of his children, while engaged in a verbal and physical altercation. The state charged Reyes with domestic assault and two additional counts. Reyes pleaded guilty to domestic assault and the state dismissed the other counts.

At the sentencing hearing in January 2019, the district court imposed a sentence of 18 months and stayed execution for five years on certain conditions. The district court imposed many conditions, two of which Reyes challenges on appeal. First, Reyes must "[c]ooperate with searches of [his] person, residence, vehicle, workplace, property, and things as directed by [his] probation officer" (search condition). Second, Reyes "must submit to random testing as directed . . . by probation and/or law enforcement" (random-testing condition).

The presentence investigation report provided to the parties before the hearing included the search and random-testing conditions, but the random-testing condition

specified "as directed by [p]robation." The district court inquired of both counsel whether there were any corrections or comments about the report. Although Reyes's counsel responded with a requested change to the "no contact" condition, Reyes did not object to the search or random-testing conditions.

After the district court imposed the sentence and stated the probation conditions, Reyes's counsel briefly commented on the random-testing condition.

> **APPELLANT'S COUNSEL**: And, Judge, this is going to sound like I'm nitpicking here, but special condition H, you said "submit to random [testing] as directed by probation and/or law enforcement." I know there was a case that came down about a couple of weeks ago unpublished, *State versus Cournoyer*, where—
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> **THE COURT**: I would expect that law enforcement would follow the law.
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> **APPELLANT'S COUNSEL**: Okay.
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> **THE COURT**: And I'm certain that the County Attorney's Office and the City Attorney's Office have directed law enforcement to follow the law.
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> **APPELLANT'S COUNSEL**: Okay. Thank you.

This appeal follows.

D E C I S I O N

On appeal, Reyes raises two issues. First, Reyes argues the search condition violates the Fourth Amendment because searches of a probationer must be supported by reasonable suspicion. Second, Reyes argues the random-testing condition violates the Fourth Amendment because it allows law enforcement to require him to submit to random testing.

Reyes failed to raise either issue during district court proceedings.[1] Generally, this court will not decide an issue that was "not raised before the district court, including constitutional questions of criminal procedure." *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). We may consider an issue for the first time on appeal "when the interests of justice require consideration of such issues and doing so would not unfairly surprise a party to the appeal." *Id.*

We question whether the interests of justice favor appellate review. On one hand, Reyes has a remedy in district court because he may move "at any time [to] correct a sentence not authorized by law." Minn. R. Crim. P. 27.03, subd. 9. On the other hand, the state does not contend that either issue is not properly before this court and the state submitted a brief arguing that the probation conditions are authorized by law. Thus, unfair surprise is not a concern. In the interests of expediting resolution of this dispute, which does not raise complex legal issues or require development of a record in the district court, we consider both issues. *See State v. Williams*, 794 N.W.2d 867, 874 (Minn. 2011) ("[W]e may choose to address . . . issues that were not raised at the district court, when the interests

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[1] We recognize that the Minnesota Supreme Court, in certain circumstances, has held that an appellant does not always forfeit a sentencing issue, even though the issue was not raised during district court proceedings. *See State v. Henderson*, 706 N.W.2d 758, 759-60 (Minn. 2005) (identifying circumstances where sentencing issues are not forfeited and exercising discretion to review sentencing issue that was not raised in district court proceedings). To date, the supreme court has not identified probation conditions as such a circumstance. Because we review the issues raised by Reyes on the merits, we do not decide whether the circumstances identified in *Henderson* apply to the probation conditions challenged by Reyes.

of justice require their consideration and when doing so would not work an unfair surprise on a party.”).

This court reviews a sentence imposed or stayed for an abuse of discretion. *State v. Franklin*, 604 N.W.2d 79, 82 (Minn. 2000). Probation conditions must be reasonably related to the purposes of sentencing and probation without being unduly restrictive. *Id.* This court will carefully review the district court’s discretion in imposing probation conditions “when [those] conditions restrict fundamental rights.” *State v. Friberg*, 435 N.W.2d 509, 516 (Minn. 1989).

First, Reyes challenges the search condition. Reyes argues that the district court failed to specify the legal standard for conducting a search, relying on *State v. Anderson*, which held that the Fourth Amendment requires a probation officer’s search of a probationer’s home to be supported by reasonable suspicion. 733 N.W.2d 128, 140 (Minn. 2007). In its brief submitted to this court, the state agrees that reasonable suspicion is required for searches of a probationer’s home. *See generally State v. Bursch*, 905 N.W.2d 884, 890 (Minn. App. 2017) (noting that probationers have a diminished expectation of privacy).

We reject Reyes’s contention that a district court must specify the legal standard for a search of a probationer’s person, residence, vehicle, workplace, or property, when requiring a probationer to submit to these searches as part of a stayed sentence. While a sentencing court must “[s]tate precisely the terms of the sentence,” *see* Minn. R. Crim. P. 27.03, subd. 4(A), it need not also state the legal standard established by caselaw because

the probation officer is presumed to know the standard. Thus, we affirm the search condition imposed on Reyes during sentencing.

Second, Reyes challenges the random-testing condition. The parties appear to agree that random testing is limited to chemical testing for illegal substances or alcohol. Reyes gives two reasons for reversing the random-testing provision, which we consider in turn.

Reyes initially argues that requiring him to submit to random chemical testing by probation is unconstitutional because the privacy implications of breath and urine tests are significant and outweigh the government's interest in supervising probation. The state responds that "the government's need to ensure compliance with [the] conditions of probation" outweighs the privacy implications of random chemical testing.

We conclude that the district court did not abuse its discretion in requiring Reyes to submit to random chemical testing by probation. Minnesota Statutes section 609.135, subdivision 1(a)(2) (2018), permits the district court to impose terms of probation and requires "the supervision to be under the probation officer of the court." And a probation officer has a "special relationship" with those under his or her supervision. *Anderson*, 733 N.W.2d at 137. Probation officers assist probationers to achieve rehabilitation and to effectively do so, probation officers need "up-to-date knowledge of the probationer's personal habits, relationships, and activities." *State v. Earnest*, 293 N.W.2d 365, 368 (Minn. 1980). Also, a probation system "presents 'special needs' beyond normal law enforcement that may justify departures from the usual warrant and probable-cause requirements." *Griffin v. Wisconsin*, 483 U.S. 873-74, 107 S. Ct. 3164, 3168 (1987). Thus,

random chemical testing by probation is reasonably related to the purposes of probation without being unduly restrictive.

Reyes also contends that requiring him to submit to random testing for illegal substances or alcohol by law enforcement is not a reasonable search under the Fourth Amendment.[2] The state responds that in *Samson v. California*, the United States Supreme Court held that "the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee" and this court should extend *Samson*'s holding to probationers. 547 U.S. 843, 857, 126 S. Ct. 2193, 2202 (2006).

We conclude that *Samson* is distinguishable. In *State v. Heaton*, this court declined to follow *Samson* with regard to suspicionless searches of a parolee's home and instead followed the reasonable suspicion standard articulated in *Anderson*. 812 N.W.2d 904, 908 (Minn. App. 2012), *review denied* (Minn. July 17, 2012). We reasoned that *Samson* turned on a California statute requiring a parolee to agree in writing to submit to searches "at any time" by a parole officer or peace officer "with or without" a search warrant. *Id. Heaton*'s reasoning applies here. Minnesota law has no parallel to the California statute analyzed in *Samson*.

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[2] We previously addressed this issue in an unpublished opinion, and concluded the district court abused its discretion when it imposed a probation condition requiring an appellant to submit to random testing by "any licensed peace officer." *See State v. Cournoyer*, No. A18-0434, 2019 WL 114198, at *4 (Minn. App. Jan. 7, 2019). Unpublished opinions are not precedential, but may be persuasive. *See State v. Roy*, 761 N.W.2d 883, 888 (Minn. App. 2009) (adopting an unpublished opinion's reasoning because it was persuasive and concerned the "exact issue" facing this court in *Roy*), *review denied* (Minn. May 19, 2009). We find *Cournoyer*'s reasoning to be very persuasive.

As mentioned above, Minnesota statutes grant discretion to the district court to impose the terms of probation and allow “the supervision to be under the probation officer of the court,” “the commissioner of corrections,” or “by some other suitable and consenting person.” Minn. Stat. § 609.135, subd. 1(a)(2). But Minnesota statutes do not authorize a district court to impose probation supervision by law enforcement. *See id*. Nor has Minnesota caselaw recognized a “special relationship” between law enforcement and probationers. *See Earnest*, 293 N.W.2d at 368.

We conclude that the district court abused its discretion by requiring Reyes to submit to random chemical testing for illegal substances or alcohol by law enforcement as a condition of probation. Thus, we reverse the random-testing condition in part and remand for the district court to clarify that random testing may be performed only by probation.

Affirmed in part, reversed in part, and remanded.