

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC.

SUPERIOR COURT

[Filed: June 20, 2017]

STATE OF RHODE ISLAND

v.

KEITH B. JOHNSON

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**C.A. Nos. W1-1991-0313A
W1-1992-0367A**

DECISION

GALLO, J. Before the Court is the State of Rhode Island’s (State) Motion to Modify the Terms and Conditions of Probation of Defendant Keith B. Johnson (Defendant). For the following reasons, the Court denies the State’s motion.

I

Facts and Travel

On October 4, 1991, the Defendant was indicted on charges of burglary, robbery, and first degree sexual assault. W1-1991-0313A. On October 23, 1992, the Defendant was arraigned on another complaint and charged with burglary and first degree sexual assault. W1-1992-0367A. The Defendant pled nolo contendere to all counts in both cases. The Defendant was sentenced to 65 years, 35 of which to serve and 30 years suspended with probation. The Defendant was also ordered to register as a sex offender.

Twenty-five years later, on October 31, 2016, the Defendant was released from the Adult Correctional Institutions (ACI). While the Defendant was at the ACI, he did not participate in any sex offender treatment, except for an initial mandatory thirty-day treatment program. Upon his release from the ACI, the Defendant was assigned to the Washington County Probation and

Parole Unit. After reviewing the Defendant's case, the probation office's supervisor filed a motion to modify the Defendant's conditions of probation, in accordance with G.L. 1956 § 12-19-8(c). The motion to modify requested that this Court modify the Defendant's probation conditions to require sex offender treatment and issue no contact orders for the victims.

On October 28, 2016, this Court held a hearing on the motion to modify. The Defendant's counsel objected to the motion on various grounds, which included a constitutional challenge to § 12-19-8(c) as applied to the Defendant. After further briefing on the matter, the Court heard oral arguments on May 23, 2017.

II

Analysis

A

Jurisdiction

The Defendant argues that this Court does not have jurisdiction to decide the instant motion as the Superior Court Rules of Criminal Procedure do not provide any mechanism for the State to bring this motion. The Defendant contends that the absence of any such rule directly conflicts with § 12-19-8(c), and in such a situation, the Defendant argues that the court rules prevail, citing Heal v. Heal, 762 A.2d 463 (R.I. 2000).

Section 12-19-8(c) provides as follows:

“At any time during the term of a sentence imposed, *the probation and parole unit of the department of corrections may seek permission of the superior or district court to modify a defendant's conditions of probation* set at the time of sentence by either imposing additional conditions of probation or removing previously imposed conditions of probation to provide for more effective supervision of the defendant. Failure of the defendant to comply with modified conditions of probation may result in a violation of probation being filed pursuant to § 12-19-9.” Sec. 12-19-8(c) (emphasis added).

The Defendant's reliance on Heal is inapposite. It is true that "in situations in which a statute and a rule approved by the Rhode Island Supreme Court are in conflict, the court rule prevails." Id. at 467. Yet, when a statute and a rule "each deal with entirely different types of conduct," then "[t]he statute is unaffected by the rule." Id.

Here, no procedural rules have been adopted that are in conflict with 12-19-8(c), which expressly states that the probation department "may seek permission of the superior . . . court to modify a defendant's conditions of probation." Sec. 12-19-8(c). The Rhode Island Supreme Court has not adopted any court rules effectuating § 12-19-8(c). Since § 12-19-8 was amended in 2014, the Court has adopted some new court rules, as referenced by the Defendant, but those rules do not conflict with § 12-19-8(c).¹ Those rules do not address the issue at hand, a motion by the State to modify terms and conditions of a defendant's probation. Therefore, there is no direct conflict between § 12-19-8(c) and any court rules, and this Court retains jurisdiction over the current matter.

B

Retroactive Application

Section 12-19-8(c), pursuant to which the State's motion was brought, was enacted in 2014. The Defendant argues that § 12-19-8(c) cannot be applied retroactively in his case as statutes are presumed to apply prospectively and the amendment was enacted well after the Defendant was sentenced in 1992. Furthermore, the Defendant contends that the application of the amended statute to him violates the constitutional prohibitions against double jeopardy and

¹ The Defendant cites the 2016 amendments to the Superior Court Rules of Criminal Procedure that increase the burden of proof at a Rule 32(f) probation violation hearing and provide a vehicle for a defendant to file a motion to terminate probation through an amendment to Rule 35.

ex post facto laws. The State suggests that the statute applies prospectively inasmuch as the Defendant was on probation at the time the statute was amended and remained on probation at the time the State brought its motion to modify. To the extent that the statute is applied retroactively, the State maintains that the statute does not violate the double jeopardy clause or the ex post facto clause as the statute is not penal in nature.

Generally, our Supreme Court cautions that “legislative enactments of the General Assembly are presumed to be valid and constitutional.” State v. Germane, 971 A.2d 555, 573 (R.I. 2009) (quoting Newport Court Club Assocs. v. Town Council of Middletown, 800 A.2d 405, 409 (R.I. 2002)); see also Taylor v. State of R.I., 101 F.3d 780, 781-82 (1st Cir. 1996) (explaining that statutes are only applied retrospectively where “it appears by strong, clear language or necessary implication that the Legislature intended the statute or amendment to have a retroactive effect”) (internal quotation marks and citations omitted).

If a statute does not expressly provide that it will apply retroactively, the statute is presumed to apply only prospectively. State v. Briggs, 58 A.3d 164, 169-70 (R.I. 2013); see also R.I. Mobile Sportfishermen, Inc. v. Nope’s Island Conservation Ass’n, Inc., 59 A.3d 112, 118 (R.I. 2013) (holding statute that provided that land owned by non-profit organizations was not subject to adverse possession claims applied only prospectively where legislation stated “act shall take effect upon passage”); but see Charter Int’l Oil Co. v. United States, 925 F. Supp. 104, 108-09 (D.R.I. 1996) (finding statute applied retroactively where there was express language in the statute that persons who owned property *at the time* that hazardous material *was actually disposed* on the property could be held liable). Further, “a statute or amendment has a retroactive effect when it would impair rights a party possessed when he acted, increase a party’s liability for past conduct, or impose new duties with respect to transactions already completed.”

2 Norman J. Singer & J.D. Shambie Singer, Statutes and Statutory Construction § 41.4 at 58 (7th ed. 2009 & Supp. 2016).

Here, there is no language that would even imply any legislative intent that § 12-19-8(c) apply retroactively. The pertinent section of § 12-19-8 was added to the statute in 2014, and the legislation provided that “[t]his act shall take effect upon passage.” See P.L. 2014, ch. 554, § 2. The statute also provides that “[a]t any time during the term of a sentence imposed,” the department of corrections may seek to modify a defendant’s probation terms. Sec. 12-19-8(c). Due to the presumption of constitutionality and prospective application, the most reasonable construction or interpretation of this statute would apply the statute solely to individuals whose sentences were imposed on or after the passage of this amendment. See State v. Morrice, 58 A.3d 156, 161-62 (R.I. 2013).

In Morrice, the Court addressed whether the deferred-sentence statute, as amended in 2010, applied retroactively or prospectively to a defendant who entered a plea deal in 2003, which included a five-year deferred sentence. 58 A.3d at 158-59. The deferred-sentence statute, as amended in 2010, provided, in pertinent part, as follows:

“If a person, after the completion of the five (5) year deferment period is determined by the court to have complied with all of the terms and conditions of the written deferral agreement, then the person shall be exonerated of the charges for which sentence was deferred and records relating to the criminal complaint, information or indictment shall be sealed pursuant to the provision of § 12-1-12.” Morrice, 58 A.3d at 159 (citing § 12-19-19(c)) (emphasis added).

The court found that the amended statute did not apply to the defendant as it only applied to individuals who *entered* into deferred sentences *after* 2010, noting that the statute had “no ‘clear, strong language’ directing that the remedies of exoneration and sealing be applied to deferred sentences entered into prior to the effective date of the amendments.” Id. at 161-62.

Turning to the language of § 12-19-8—“[a]t any time during the term of a sentence imposed”—as there is no indication that the statute should be applied retroactively, it should be applied prospectively, applying only to those individuals whose sentences were imposed *after* the statute was amended in 2014. See id. at 161. As the Defendant’s sentence was imposed in 1992, the amended statute, applied prospectively, does not apply to him.

In the absence of express language or any implication of retroactive application, the Court looks to whether a statute is substantive, remedial, or procedural. Briggs, 58 A.3d at 170 (finding statutory amendment provided more people would be eligible for expungement of their criminal records, and so was substantive as it created “new substantive rights,” even though the deferred sentence statute as a whole was remedial); see also Theta Props. v. Ronci Realty Co., Inc., 814 A.2d 907, 916 (R.I. 2003) (quoting Lawrence v. Anheuser-Busch, Inc., 523 A.2d 864, 869 (R.I. 1987)) (“The distinction between substantive and remedial statutes, however, becomes significant only in cases in which ‘a statute lacks the requisite specificity or necessary implication regarding retroactivity.’”).

“Substantive statutes, which create, define, or regulate substantive legal rights, must be applied prospectively. . . . In contrast, remedial and procedural statutes, which do not impair or increase substantive rights but rather prescribe methods for enforcing such rights, may be construed to operate retroactively.” Briggs, 58 A.3d at 170 (quoting Direct Action for Rights & Equal. v. Gannon, 819 A.2d 651, 658 (R.I. 2003) (holding that amendment was remedial where it provided for attorneys’ fees as an addition to the statutory scheme providing for “the substantive right to have access to public records”)); see also Romano v. B. B. Greenberg Co., 108 R.I. 132, 136, 273 A.2d 315, 317 (1971) (“A procedural statute has been defined as one which neither enlarges nor impairs substantive rights but rather relates to the means and procedures for

enforcing these rights.”). In Romano, the court found that an amendment to a workers’ compensation statute that defined a new computation of a worker’s average weekly wage was substantive as it affected the amount of “benefits due a workman,” which the court considered “a matter of substance and not one of procedure.” 108 R.I. at 137, 273 A.2d at 317.

Section 12-19-8(c) regulates substantive legal rights as it relates to the modification of a defendant’s probation conditions, and it is not simply procedural as it *does* impair defendants’ substantive legal rights by allowing the department of corrections to impose additional conditions to a defendant’s probation. See Briggs, 58 A.3d at 170; see also Morrice, 58 A.3d at 162 (recognizing that the deferred-sentence statute “expanded ‘the universe of people who are afforded the right to have their criminal records shielded from the public,’ and thus created a substantive right that otherwise was not available”). Similarly to our Supreme Court’s finding that the statute in Morrice was substantive as it expanded rights for individuals, this Court finds that § 12-19-8(c) is substantive as it curbs the rights of probationers. See id. at 162. As such, § 12-19-8(c) should be applied prospectively, and it does not apply to the Defendant.

As this issue is dispositive of the State’s motion, the Court need not reach the constitutional issues inherent in the application of the statute, as amended, to the Defendant.

III

Conclusion

For the preceding reasons, the State’s motion to modify the Defendant’s conditions of probation is denied. Counsel shall submit the appropriate judgment for entry.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: State of Rhode Island v. Keith B. Johnson

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COURT: Washington County Superior Court

DATE DECISION FILED: June 20, 2017

JUSTICE/MAGISTRATE: Gallo, J.

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