IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

| | | |
|---|---|---|
| STATE OF WASHINGTON, | ) | No. 62738-4-I |
| | ) | |
| Respondent, | ) | |
| | ) | |
| v. | ) | |
| | ) | |
| B.D.R., | ) | UNPUBLISHED OPINION |
| | ) | |
| Appellant. | ) | FILED: December 21, 2009 |
| | ) | |

Ellington, J. — B.R. appeals the revocation his special sex offender disposition alternative (SSODA). He contends the State deprived him of due process by failing to provide adequate notice of the alleged violations for which it sought revocation and that the court erred by revoking his SSODA without finding the violations willful. We disagree and affirm.

## BACKGROUND

B.R. was charged with rape of a child in the first degree for having repeated sexual contact with a 10 year old girl when he was 15. In exchange for B.R.'s plea of guilty to first degree child molestation, the State amended the charge and recommended a SSODA. After an evaluation, the juvenile court granted a SSODA, ordered B.R. to be placed on community supervision for 24 months, and ordered several conditions of community supervision. Among these conditions were the

requirements that B.R. "have no contact with youth 24 months or more younger" and "comply with all conditions of the treatment contract and program."[1] The order provided that violations of any conditions or failure to make satisfactory progress in treatment "may result in revocation of community supervision and the imposition of the . . . commitment time previously suspended."[2] The disposition was entered on August 27, 2008.

B.R. met with treatment provider Rick Ackerman on September 2, 2008 and entered into a treatment contract in which he agreed, among other things, "not to loiter in places frequented by minor children or vulnerable populations."[3]

On September 6, 2008, Everson Police Officer Mike Munden discovered B.R. and a friend in a park gazebo. Two families with several children under 10 were in the park about 20 yards away. The families saw B.R. and his friend enter the park. When the officer confronted B.R., he acknowledged he was not supposed to be in the park, but claimed the families had just arrived and he was about to leave.

Officer Munden also became aware of an incident that had occurred on August 2, 2008. B.R. and a friend had contact with several children, the oldest of whom was 14. B.R. asked the 14 year old girl questions about her experience with sex and drugs. When one of the younger children accidentally hit B.R. or his friend with a shoe, B.R. threatened the children with a metal pipe.

On September 8, 2008, the State moved to revoke B.R.'s SSODA based upon

---

[1] Clerk's Papers (CP) at 128, 129.

[2] CP at 130.

[3] Ex. 1 (Sept. 19, 2008 letter from Rick Ackerman).

"[v]iolation of [c]ourt ordered conditions on disposition" and "[f]ailing to make satisfactory progress in treatment."[4] Specifically, the State alleged B.R. violated the SSODA conditions by being "[p]resent at Nooksack City Park where persons two years or younger were also present. [B.R.] did not have a supervisor with him when he decided to enter and stay in the park."[5] The motion attached two police reports, one recounting the incident at the park and one concerning the August incident.

Officer Munden and Rick Ackerman testified at the revocation hearing. Officer Munden testified as outlined above. Ackerman testified about concerns he had had about B.R. before he was accepted into the SSODA program, including B.R.'s performance on polygraph examinations and reports that he had made racist comments to African-American children. Ackerman stated he would not have recommended a SSODA had he known about the August incident. He concluded that B.R. was not safe to be in the community and recommended the SSODA be revoked. Ackerman admitted his recommendation was "probably based mostly on the August 12th behavior."[6]

The commissioner revoked B.R.'s SSODA. He found B.R. had "violated the terms and conditions of the SSODA as follows: Respondent violated the terms of treatment by being in an area with children under the age of 10."[7] The commissioner also found: "The juvenile is not amenable to the SSODA program according to the treatment provider."[8] The commissioner imposed a determinate high-end sentence of

---

[4] CP at 115–16.

[5] CP at 116.

[6] RP (Oct. 1, 2008) at 42.

[7] CP at 113.

[8] Id.

36 weeks at the Juvenile Rehabilitation Administration.

B.R. moved to revise the commissioner's decision. The judge ruled the August incident should not have been considered because it occurred before B.R. was in the SSODA program, and conducted a further hearing to determine whether Ackerman would recommend revocation based only upon the incident at the park. Despite his acknowledgement that B.R.'s behavior since the park incident was satisfactory, Ackerman maintained that B.R.'s SSODA should be revoked.

The court ruled that B.R. had violated the terms and conditions of his SSODA "by being in an area where children were likely to congregate."[9] Based upon that finding, and relying heavily on Ackerman's recommendation, the court denied the motion to revise the SSODA revocation.

DISCUSSION

B.R. challenges the revocation on two grounds. He first contends the State violated his right to due process by failing to provide him adequate notice of the alleged violations for which it sought revocation. Additionally, he argues the juvenile justice statute required the court to find he willfully violated the conditions of his suspended sentence before it could revoke the SSODA. We generally review revocation of a suspended sentence for abuse of discretion.[10] Since all of B.R.'s arguments allege due process violations or involve questions of statutory interpretation, however, our review

[9] CP at 8.

[10] State v. Badger, 64 Wn. App. 904, 908, 827 P.2d 318 (1992). A trial court abuses its discretion if its decision is manifestly unreasonable or is based on untenable grounds or untenable reasons. State v. Rohrick, 149 Wn.2d 647, 654, 71 P.3d 638 (2003).

is de novo.[11]

*Notice*

In Morrissey v. Brewer,[12] the United States Supreme Court articulated minimum due process requirements for parole and probation revocation hearings. Washington courts have applied these standards to revocation of suspended sentences.[13] Relevant here is the requirement that the offender receive written notice of claimed violations. "For purposes of minimal due process, proper notice must set forth all alleged parole violations so that a defendant has the opportunity to marshal the facts in his defense."[14]

Here, the State's motion informed B.R. it sought revocation because he violated a court-ordered condition of community supervision by being in a city park without supervision where children two years younger were also present and because he had failed to make satisfactory progress in treatment.[15] The superior court found that he violated the terms of his disposition "by being in an area where children were likely to congregate."[16] Avoiding areas where children are likely to congregate was a condition

---

[11] State v. Nelson, 158 Wn.2d 699, 702, 147 P.3d 553 (2006); State v. Jacobs, 154 Wn.2d 596, 600, 115 P.3d 281 (2005); State v. Simpson, 136 Wn. App. 812, 816, 150 P.3d 1167 (2007).

[12] 408 U.S. 471, 489, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

[13] State v. Dahl, 139 Wn.2d 678, 683, 990 P.2d 396 (1999) ("minimal due process entails: (a) written notice of the claimed violations; (b) disclosure to the parolee of the evidence against him; (c) the opportunity to be heard; (d) the right to confront and cross-examine witnesses (unless there is good cause for not allowing confrontation); (e) a neutral and detached hearing body; and (f) a statement by the court as to the evidence relied upon and the reasons for revocation") (citing Morrissey, 408 U.S. at 489).

[14] Id. at 684 (citing Morrissey, 408 U.S. at 489).

[15] CP at 115–16, 128.

[16] CP at 8.

of B.R.'s sex offender treatment contract, compliance with which was a condition of his SSODA.

B.R. argues the State's motion was insufficient to provide him notice that the State alleged he violated the treatment condition to avoid areas where children congregate. But B.R. failed to object to lack of proper notice below. In State v. Robinson,[17] we held that the failure to object to lack of proper notice in an adult SSOSA modification hearing waived the issue on appeal. Robinson relied in part on State v. Nelson,[18] in which the Supreme Court held that failure to object to a violation of the due process right to confront witnesses in a probation revocation hearing waived the issue.

B.R. urges us to reconsider Robinson. He argues the Robinson court's reliance on Nelson was misplaced because "insufficient notice is treated differently than other errors affecting due process rights."[19] But he provides no support for that proposition. Further, his remaining arguments on this point rely on cases involving insufficient charging documents, challenge to which may be raised for the first time on appeal. But the law is clear that "the due process rights afforded at a revocation hearing are not the same as those afforded at the time of trial."[20] The analogy is inapt.

Because B.R. fails to demonstrate that Robinson is incorrect or harmful, we decline his invitation to overrule it.[21] B.R. failed to object to notice below and has

---

[17] 120 Wn. App. 294, 299–300, 85 P.3d 376 (2004).

[18] 103 Wn.2d 760, 766, 697 P.2d 579 (1985).

[19] Appellant's Br. at 8.

[20] State v. Dahl, 139 Wn.2d 678, 683, 990 P.2d 396 (1999).

[21] See State v. Ray, 130 Wn.2d 673, 679, 926 P.2d 904 (1996) (courts adhere to precedent absent a showing that prior rulings are incorrect or harmful).

waived review of the issue on appeal.

Nonetheless, the notice met minimal due process requirements. The purpose of notice is to allow the offender "the opportunity to marshal facts in his defense."[22] That purpose was amply satisfied by the notice here, which alleged that B.R. violated the SSODA conditions and failed to make satisfactory progress in treatment by being in the park where children were present. B.R. argues the court's finding that the violation consisted of being in an area where children are likely to congregate is somehow different from the general allegation in the notice that he violated the terms of the SSODA by being in the park where younger children were present. But being "[p]resent at Nooksack City Park where persons two years or younger were also present without a supervisor" plainly violated both the SSODA condition that B.R. not be among children two years younger than himself and the SSODA condition that he comply with all treatment conditions, one of which was that he not loiter in areas where children are likely to congregate. The police reports attached to the notice included all the evidence upon which the State relied and thus provided B.R. all the information necessary to prepare his defense. The notice met minimum due process standards.

*Willfulness*

B.R. next contends the juvenile justice statute required the court to find his violation willful before revoking his SSODA.[23]

---

[22] Dahl, 139 Wn.2d at 684 (citing Morrissey, 408 U.S. at 489).

[23] In his brief, B.R. also argued that due process requires a willfulness finding before the court may revoke a SSODA. Our Supreme Court recently rejected that argument in State v. McCormick, 166 Wn.2d 689, 707, 213 P.3d 32 (2009). In light of that decision, B.R. abandoned the claim at oral argument. We therefore need not reach the issue.

The goal of statutory interpretation is to discern and implement the legislature's intent.[24] When interpreting a statute, the court first looks to its plain language.[25] If the plain language is subject to only one interpretation, the inquiry ends and the statute must be enforced in accordance with its plain meaning.[26]

RCW 13.40.160(3) concerns the juvenile court's authority to impose, condition, and revoke a SSODA. After an examination indicating amenability to treatment, the court may suspend the otherwise applicable disposition and place the offender on community supervision for at least two years.[27] As a condition of the suspended disposition, the court may impose conditions of supervision and other conditions.[28]

RCW 13.40.160(3)(b)(ix) is the provision at issue here. It sets out the consequences for failing to comply with conditions of a suspended disposition:

> If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition or the court may impose a penalty of up to thirty days' confinement for violating conditions of the disposition. The court may order both execution of the disposition and up to thirty days' confinement for the violation of the conditions of the disposition.[29]

The statute plainly contains no willfulness requirement. It is also substantially similar to the corresponding adult statute, which provides, in part:

> The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or

---

[24] State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

[25] Id.

[26] Id.

[27] RCW 13.40.160(3).

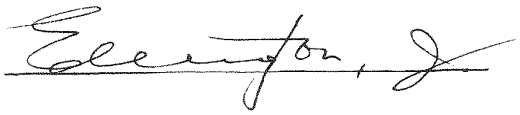
[28] Id.

[29] RCW 13.40.160(3)(b)(ix).

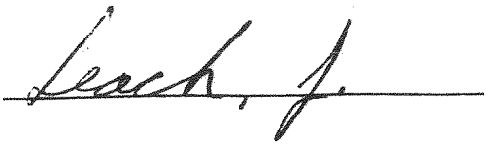
> (b) the court finds that the offender is failing to make satisfactory progress in treatment.[30]

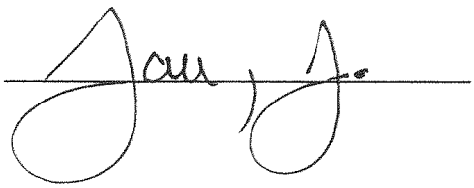
In State v. McCormick,[31] the Supreme Court recently held this language requires no willfulness finding for a violation of a condition that does not involve community service or legal financial obligations. McCormick was decided after the parties completed the briefing in this case. At oral argument, B.R. argued the case should not control in the juvenile context. Given the similarity of the two provisions, however, we see no useful distinction and adopt the McCormick court's reasoning. RCW 13.40.160(3)(b)(ix) requires no finding of willfulness.[32]

Affirmed.



WE CONCUR:





[30] RCW 9.94A.670(11).

[31] 166 Wn.2d 689, 698, 213 P.3d 32 (2009).

[32] In his brief, B.R. also argued due process requires a willfulness finding. In light of the Supreme Court's decision to the contrary in McCormick, he has abandoned the claim and we do not address it. See id. at 703.