

226 A.D.3d 1147
Supreme Court, Appellate Division, Third
Department, New York.

The PEOPLE of the State of New York,
Respondent,
v.
Kristina N. HYER, Appellant.

109182
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Calendar Date: February 16, 2024
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Decided and Entered: April 11, 2024

Synopsis

Background: Following defendant's guilty plea to criminal possession of a forged instrument in the second degree and sentence to five-year term of probation, the People filed a probation violation petition, alleging that defendants violated probation condition that required her to comply with any recommendations given to her by probation officer, reasonably related to her rehabilitation and compliance with probation, by continuing to contact her husband after officer had directed defendant to cease contact. The County Court, Delaware County, Gary A. Rosa, J., revoked defendant's probation and imposed sentence of imprisonment. Defendant appealed.

Holdings: The Supreme Court, Appellate Division, Egan, Jr., J.P., held that:

[1] condition that required defendant to comply with recommendations given by probation officer was within sentencing court's considerable latitude, and

[2] probation officer's directive that defendant refrain from contact with her husband was lawful and reasonable.

Affirmed.

Procedural Posture(s): Appellate Review; Sentencing or Penalty Phase Motion or Objection.

West Headnotes (5)

[1] Sentencing and Punishment🔑Validity

Sentencing court did not exceed its authority in finding that probation condition that required defendant to comply with recommendations given by probation officer, reasonably related to her rehabilitation and compliance with probation, was necessary and appropriate to give defendant best chance of success in her substance use treatment and to prevent relapse that would lead to her failure to complete treatment court and her imprisonment, and thus condition was reasonably related to statutory goals of probation, such that condition was within court's considerable latitude; defendant agreed to condition as part of plea bargain and treatment court contract that afforded her probationary sentence upon the understanding that she would successfully engage in and complete treatment court. [N.Y. Penal Law § 65.10\(1\)](#).

1 Case that cites this headnote

[2] Sentencing and Punishment🔑Validity or reasonableness of conditions in general

Broad statutory authority to impose conditions of probation to insure that the defendant will lead a law-abiding life or to assist the defendant toward that goal permits the court to tailor the conditions to the defendant's need, in recognition of the fact that an exhaustive statutory list of behavioral conditions would have been impossible. [N.Y. Penal Law § 65.10\(1\)](#).

[3] Criminal Law🔑Representations, promises, or coercion; plea bargaining Sentencing and Punishment🔑Validity or reasonableness of conditions in general

Probation conditions imposed as part of a plea arrangement are valid if the parties agree to them and they do not violate any statute or contravene public policy.

1 Case that cites this headnote

[4] Sentencing and Punishment 🔑 Validity

Probation officer's directive that defendant refrain from contact with her husband, relying upon probation condition that required defendant to comply with recommendations given by probation officer that were reasonably related to her rehabilitation and compliance with probation, was lawful and reasonable; husband was convicted of offenses arising out of the same course of conduct that had led to defendant's conviction, thus husband was a negative influence contributing to defendant's criminal activity, and directing defendant not to contact husband was reasonably related to her rehabilitation and consistent with the sentencing court's intent in imposing condition. [N.Y. Penal Law § 65.10](#).

[5] Sentencing and Punishment 🔑 Status of probationer in general

Probationers do not enjoy the absolute liberty to which every citizen is entitled, but instead have conditional liberty properly dependent on observance of special probation restrictions.

Attorneys and Law Firms

****743** [Aaron A. Louridas](#), Delmar, for appellant.

[Shawn J. Smith](#), District Attorney, Delhi ([Denise J.](#)

[Kerrigan](#) of counsel), for respondent.

Before: [Egan Jr.](#), J.P., [Clark](#), [Lynch](#), [McShan](#) and [Powers](#), JJ.

MEMORANDUM AND ORDER

[Egan Jr.](#), J.P.

***1147** Appeal from a judgment of the County Court of Delaware County (Gary A. Rosa, J.), rendered August 8, 2016, which revoked defendant's probation and imposed a sentence of imprisonment.

In 2015, defendant waived indictment and pleaded guilty to two counts of criminal possession of a forged instrument in the second degree in satisfaction of a 35-count superior court information. Defendant further waived the right to appeal. A written plea agreement and drug treatment court contract contemplated that defendant would be sentenced to a five-year term of probation if she successfully completed treatment court; if she did not, she would be found in violation of probation and sentenced to a prison term of 2½ to 7 years. In December 2015, County Court (Burns, J.) imposed the agreed-upon probationary term and defendant acknowledged receipt of the written conditions of probation, including condition [No. 10](#), which required her to "comply with any recommendations given to her by her ****744** [p]robation [o]fficer, reasonably related to her rehabilitation and compliance with probation."

Defendant was subsequently charged with violating several conditions of probation and, upon her March 2016 admission to a violation, was continued on probation and remanded to jail until she could be placed in a residential treatment program. She was still in jail on May 5, 2016, when her probation officer advised her in writing that he was aware that she had been in email communication with her husband, who had used illegal substances with her "on multiple occasions" and had also been convicted of offenses connected to his role in the conduct that led to defendant's convictions. The probation officer directed defendant, pursuant to condition [No. 10](#), to refrain from contacting her husband until there had been "serious progress" in their efforts at rehabilitation and in making restitution toward their joint victim. The contact did not cease and, on May 26, 2016, a probation violation petition

was filed. Following an ***1148** evidentiary hearing, County Court (Rosa, J.) determined, among other things, that the directive was appropriate and that defendant's subsequent email contact with her husband violated condition [No. 10](#). The court revoked defendant's probation and resentenced her to 2½ to 7 years in prison. Defendant appeals.

Defendant argues that County Court erred in finding that she had violated the conditions of her probation, both because condition [No. 10](#) was itself unlawful and because her probation officer's directive not to have contact with her husband was unreasonable and violated her right to communicate with her spouse. Defendant's unchallenged appeal waiver does not preclude these challenges to the legality of condition [No. 10](#) and the directive issued under it (see [People v. Romanelli](#), 188 A.D.3d 1354, 1355, 134 N.Y.S.3d 118 [3d Dept. 2020], *lv denied* 36 N.Y.3d 1059, 141 N.Y.S.3d 751, 165 N.E.3d 677 [2021]), and our review of the record confirms that they are properly preserved for our review. We accordingly turn to the merits and affirm.

^[1] ^[2]Defendant first suggests that probation condition [No. 10](#) improperly delegated authority to impose conditions on her probation to the Probation Department and that her probation officer lacked the authority to impose the no-contact condition without court approval. Although defendant is correct that conditions of probation must be set by the sentencing court, [Penal Law § 65.10](#) contains "a catchall provision which allow[s] sentencing courts to set 'any other conditions reasonably related to [a probationer's] rehabilitation' " ([People v. Hakes](#), 32 N.Y.3d 624, 629, 94 N.Y.S.3d 221, 118 N.E.3d 883 [2018], quoting [Penal Law § 65.10\[2\]\[1\]](#)). To that end, "[p]robation contemplates and even requires a level of official supervision substantial enough 'to insure that the defendant will lead a law-abiding life' or to assist the probationer toward that goal" ([People v. Hale](#), 93 N.Y.2d 454, 461, 692 N.Y.S.2d 649, 714 N.E.2d 861 [1999], quoting [Penal Law § 65.10\[1\]](#); see [People v. Donaldson](#), 110 A.D.3d 1120, 1121, 972 N.Y.S.2d 114 [3d Dept. 2013]). This broad authority permits the court to tailor the conditions to the probationer's needs (see [People v. Hale](#), 93 N.Y.2d at 461, 692 N.Y.S.2d 649, 714 N.E.2d 861; [People v. Romanelli](#), 188 A.D.3d at 1355, 134 N.Y.S.3d 118), in recognition of the fact that "an exhaustive [statutory] list of behavioral conditions would ... have been impossible" ([People v. Letterlough](#), 86 N.Y.2d 259, 263, 631 N.Y.S.2d 105, 655 N.E.2d 146 [1995]). Further, the court may impose "any other reasonable condition as the court shall determine to be necessary or appropriate to ameliorate the ****745** conduct which gave rise to the offense or to prevent the incarceration of the defendant"

([Penal Law § 65.10\[5\]](#)).

^[3]Probation condition [No. 10](#) was within the sentencing court's ***1149** "considerable latitude" ([People v. Romanelli](#), 188 A.D.3d at 1355, 134 N.Y.S.3d 118) in that it merely directed that defendant comply with directives by her probation officer that were "reasonably related to her rehabilitation and compliance with probation." Importantly, defendant agreed to this condition as part of her plea bargain and treatment court contract that afforded her a probationary sentence upon the understanding that she would successfully engage in and complete treatment court, and "[c]onditions imposed as part of a plea arrangement are valid if the parties agree to them and they do not violate any statute or contravene public policy" ([People v. Avery](#), 85 N.Y.2d 503, 507, 626 N.Y.S.2d 726, 650 N.E.2d 384 [1995]). We cannot, as a result, conclude upon this record that the sentencing court exceeded its authority in finding that condition [No. 10](#) was necessary and appropriate to give defendant the best chance of success in her substance abuse treatment and to prevent a relapse that would lead to her failure to complete treatment court and her imprisonment (see [People v. Romanelli](#), 188 A.D.3d at 1355–1356, 134 N.Y.S.3d 118). As such, the condition itself was "reasonably related to the goals of probation" as set forth in [Penal Law § 65.10](#) and was properly imposed ([People v. Blanco–Ortiz](#), 196 A.D.3d 1153, 1154, 150 N.Y.S.3d 206 [4th Dept. 2021]).

^[4] ^[5]The probation officer's directive, relying upon condition [No. 10](#), that defendant refrain from contact with her husband was also lawful and reasonable. Defendant did not have an unqualified right to communicate with her spouse, as "probationers ... do not enjoy the absolute liberty to which every citizen is entitled, but [instead have] conditional liberty properly dependent on observance of special probation restrictions" ([Griffin v. Wisconsin](#), 483 U.S. 868, 874, 107 S.Ct. 3164, 97 L.Ed.2d 709 [1987] [internal quotation marks, brackets and citation omitted]; see [People v. Whindleton](#), 54 A.D.3d 422, 423, 862 N.Y.S.2d 295 [2d Dept. 2008], *lv. denied* 12 N.Y.3d 822, 881 N.Y.S.2d 30, 908 N.E.2d 938 [2009]). Defendant's probation officer testified at the violation hearing that defendant had been estranged from her husband at the time of her conviction and that her husband was convicted of offenses arising out of the same course of conduct that had led to defendant's conviction. The probation officer accordingly directed defendant, following consultation with parole and social services officials, as well as the treatment court coordinator, not to contact her husband because of the need to "keep people away from each other ... when they commit offenses together" and to give both her and her husband the opportunity to "obtain some success at rehabilitation" on

their own before attempting it together. Under these circumstances, defendant's husband was "a negative influence contributing to ... defendant's criminal activity," and directing her not to contact him was "reasonably related to [her] rehabilitation" and consistent *1150 with the sentencing court's intent in imposing condition No. 10 (*People v. Howland*, 145 A.D.2d 866, 867, 536 N.Y.S.2d 191 [3d Dept. 1988] [internal quotation marks and citation omitted]; see *People v. Swenson*, 12 A.D.3d 948, 948, 785 N.Y.S.2d 175 [3d Dept. 2004]). County Court therefore properly determined from the foregoing – as well as the evidence reflecting that defendant was well aware that she was prohibited from contacting her husband and attempted to hide the fact that she was doing so by surreptitiously sending **746 emails to the husband using other inmates' accounts – that the People had established by a preponderance of the evidence that defendant violated the terms of her probation (see CPL

410.70[3]; *People v. Songa*, 132 A.D.3d 1071, 1072, 19 N.Y.S.3d 108 [3d Dept. 2015]).¹ Defendant's remaining contentions have been reviewed and lack merit.

Clark, Lynch, McShan and Powers, JJ., concur.

ORDERED that the judgment is affirmed.

All Citations

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Footnotes

- ¹ We note that, although defendant and her husband were both involved in parental termination proceedings in Family Court, the hearing evidence reflected that the emails exchanged between them while defendant was incarcerated did not involve that issue.