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62nd Montana Legislature

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LEGAL MEMORANDUM

TO: Members, Law and Justice Interim Committee
FROM: David S. Niss, Staff Attorney
RE: Analysis of Montana Supreme Court Opinion in State v. Cook
DATE: March 29, 2012

I
INTRODUCTION

At the Law and Justice Interim Committee's (LJIC) February meeting, Senator Hinkle asked how it could happen that a Montana Supreme Court opinion affirmed a decision by a Montana District Court to revoke an inmate's suspended sentence 2 days before the inmate was to be paroled for the reason that the inmate could not find suitable housing. This memorandum responds to Sen. Hinkle's request for more information.

II
DISCUSSION

In State v. Cook, 2012 MT 34, 364 Mont. 161, __P3d__, decided February 14, 2012, the Montana Supreme Court affirmed a ruling of the District Court of the Eighth Judicial District (Cascade County) revoking the suspended sentence of Rozell Roland Cook, a level 3 sexual offender, 2 days before Cook was scheduled to be released from custody. Cook had been sentenced to the custody of the Department of Corrections for two concurrent, 20-year terms with 10 years suspended. According to the opinion, Cook had been subjected to 25 conditions as part of the suspension and conditions numbered 1, 6, and 15 had not been fulfilled by Cook on the eve of his release. Those conditions were:

1. Defendant shall be placed under the supervision of the Adult Probation and Parole Bureau during the suspended portion of the sentence and shall follow all rules and regulations thereof.

6. Defendant shall obtain any counseling/evaluations, at his own expense, as deemed appropriate by his supervising officer and shall follow all recommendations of his counseling/evaluations.

15. Defendant's place of residence shall not be within 1500 feet of a school, playgrounds, toy stores, etc. . . .

During the pendency of two District Court revocation hearings, Cook was unable to find treatment and housing alternatives that satisfied the foregoing conditions. Here, taken from page 5 of the Supreme Court's opinion, is the language of the majority opinion as to why the conditions of the suspended sentence were found to have been not satisfied by the District Court:

The District Court found that Cook violated conditions 1 and 15 of his suspended sentence by not having an approved residence on the eve of his release. Instead of finding that he had violated condition 10, the court found that he violated condition 6 with respect to treatment and counseling.

The District Court found that "with respect to residence, [Cook] has not identified a place of residence outside the 1,500 feet from schools, playgrounds, places where children congregate, etc. . . in the nearly five months that have elapsed since his discharge dates." The court rejected a Great Falls apartment complex because it contained "at least nine units, and maybe more, in which it can be assumed that children live and congregate."

Treatment from Dr. Zook was rejected because she was not MSOTA qualified, and the court was unwilling to consider Cook living at the shelter or traveling to Helena for his treatment. The court opined, "This is the defendant's issue and the difficulty is a result of his conduct and record. And that is not something that the Court can remedy or overlook."

In its opinion, the Supreme Court noted the degree of danger that Cook posed to children, when the Court said:

In this case, the District Court found Cook to be an "extremely dangerous sex offender," with "questionable" prospects for rehabilitation. Cook's burden was to come up with a plan to show that he could be released to serve his suspended sentence in compliance with its conditions. Yet, even five months after the petition to revoke was filed, Cook had failed to find an MSOTA-qualified treatment provider and a residence that complied with his conditions of suspension. Thus, the court found him to remain a "high risk to children in need of the highest level of supervision," and determined that no alternatives short of incarceration were suitable.

Also in its opinion, the Supreme Court dealt with several important legal arguments, as Cook presented them to the Supreme Court by his counsel, an Assistant Appellate Defender. The Court noted that it had previously held in State v. Tirey¹ that a violation of a single term or condition of a suspended part of a sentence is sufficient to support a court's revocation of that sentence. The Supreme Court also noted that it had previously held that violations of nonfinancial conditions need not necessarily be willful in order to justify revocation, citing State v. Lee.²

In short, it appears Mr. Cook's release was revoked because (1) he could not find either treatment, which was predicated upon housing, or housing itself, (2) he could not find housing because of the broad exclusionary conditions imposed by the courts on a level 3 sexual offender, as interpreted and applied by Mr. Cook's probation officers, and (3) the law was against him on the issue of whether the violations of his parole conditions (that he obtain treatment and housing) had to be willful violations. However, there is evidence in the Supreme Court opinion, based upon Cook's testimony to the District Court at the revocation hearing, indicating that Mr. Cook was less than satisfied with the efforts of the Department of Corrections in helping him locate treatment and housing.

III CONCLUSION

In State v. Cook, the Montana Supreme Court affirmed the decision of the District Court of the Eighth Judicial District revoking the suspended sentence of Rozell Cook because Mr. Cook was unable to locate either housing or treatment (which was predicated upon housing) to the satisfaction of his probation officers interpreting the very board conditions upon which his suspended sentence depended. These conditions and their interpretation probably resulted from the fact that Mr. Cook is a level 3 sexual offender.

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¹2010 MT 283, 358 Mont. 510, 247 P.3d 701.

²2001 MT 176, 306 Mont. 173, 31 P.3d 998 (citing Bearden v. Georgia, 461 U.S. 660 (1983)). In the words of the Montana Supreme Court, any violation of a condition that "frustrates" the purpose of probation, in this case treatment for a highly dangerous, level 3 sex offender, justifies revocation, whether that violation is willful or not.