

SUPREME COURT OF VERMONT

State v. Owen Cornell

2016 VT 47 (2016) · No. 2015-100 · Decided April 22, 2016

SUMMARY

The Vermont Supreme Court reviews six probation conditions imposed on Owen Cornell, a convicted sex offender. The court remands conditions concerning residence or employment approval, counseling or training, warrantless searches, and computer and internet use for further justification, amendment, or elimination. It affirms conditions prohibiting violent or threatening behavior and restricting access to places where children congregate.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Dooley, J.; Reiber, C.J.; Skoglund, J.; Robinson, J.; Eaton, J.
JURISDICTION	Vermont
DECIDED	April 22, 2016
DOCKET	2015-100
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed the sentencing court's imposition of six probation conditions following remand from an earlier appeal concerning the validity of his probation conditions.
STANDARD OF REVIEW	The Supreme Court reviewed probation conditions for an abuse of sentencing discretion, finding error when discretion was exercised to a clearly unreasonable extent. Constitutional challenges to probation conditions were reviewed under the applicable due-process and Fourth Amendment standards.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential.
PARTIES	Owen Cornell v. State of Vermont

TOPICS

- probation
- search and seizure
- fourth amendment
- due process
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the condition requiring Cornell to reside or work where his probation officer approved was sufficiently individualized and justified.
2. Whether the condition requiring Cornell to attend any counseling or training ordered by his probation officer impermissibly delegated judicial authority.
3. Whether the condition prohibiting violent or threatening behavior was invalid or impermissibly infringed Cornell's due-process and First Amendment rights.
4. Whether the condition restricting access to places where children congregate was unconstitutionally vague or overbroad.
5. Whether the warrantless search-and-seizure condition complied with the Fourth Amendment and Article 11 of the Vermont Constitution.
6. Whether the prohibition on possessing a home computer and accessing the Internet without probation-officer approval was an impermissibly broad and insufficiently individualized probation condition.

HOLDINGS

1. A broad condition requiring a probationer to reside or work where the probation officer approves is invalid when the sentencing court's findings do not narrowly tailor the condition to the defendant's specific history, offense, or future risk.
2. A probation condition granting a probation officer open-ended authority to require any counseling or training is an impermissible delegation of judicial authority absent particularized findings and sufficiently constrained programming options.
3. A probation condition prohibiting violent or threatening behavior is not facially invalid merely because similar wording has caused notice problems in cases involving speech, although trial courts should clarify its scope to provide fair warning.
4. A probation condition prohibiting access to or loitering in places where children are known to congregate, with illustrative examples such as parks, playgrounds, and schools, is not unconstitutionally vague when the operative phrase and examples sufficiently identify the prohibited locations.
5. A probation condition authorizing warrantless searches must require reasonable suspicion under the Fourth Amendment, and under Article 11 must be narrowly tailored to the individual probationer and supported by a special need. The condition here required amendment because it authorized searches without expressly stating the reasonable-suspicion limitation and treated computers and digital media as contraband despite the invalidity of the computer ban.
6. A probation condition banning computer possession at home and Internet access without probation-officer approval is impermissibly overbroad when the defendant did not use a computer in the offense and no other evidence supports restricting Internet access.

KEY QUOTATIONS

“Probation conditions may not be “unduly restrictive of the probationer’s liberty or autonomy.”” (¶ 6)

“At a minimum therefore, the statute requires more than the bare recitation that a defendant is a sex offender and that incursions onto his liberty are justifiable on that basis alone.” (¶ 7)

“A court that has failed to identify any particular counseling or training needs cannot categorically impose such a requirement upon all sex offenders.” (¶ 18)

“We do not join these courts in this extension of Samson, and continue to hold that reasonable suspicion for search and seizure imposed on probationers is required by the Fourth Amendment.” (¶ 36)

“We agree with the reasoning of the federal courts and hold that a condition that imposes a ban on computer or internet usage subject to approval by a probation officer, where the defendant did not actually employ a computer in the commission of the offense, and where no other evidence supports a restriction on a defendant’s access to the internet, constitutes a “greater deprivation of liberty than is reasonably necessary to deter illegal conduct and protect the public.”” (¶ 43)

FACTUAL BACKGROUND

Cornell was convicted of lewd and lascivious behavior involving a twelve-year-old boy and was sentenced to two to six years in prison, with all but twenty months suspended. On remand, the trial court imposed conditions requiring, among other things, probation-officer approval of residence and employment, compliance with counseling or training ordered by the probation officer, warrantless search and seizure, restrictions on access to places where children congregate, and a prohibition on possessing a computer at home or accessing the Internet without approval. The record did not show that Cornell used a computer or the Internet in committing the offense, and the trial court relied primarily on generalized concerns about sex offenders rather than individualized findings.

PROCEDURAL HISTORY

Cornell was convicted of lewd and lascivious behavior and received a partially suspended prison sentence with probation conditions. In an earlier appeal, the Vermont Supreme Court remanded for the trial court to resolve challenges to the conditions. On remand, the Superior Court replaced the conditions and issued additional findings. Cornell appealed again, and the Supreme Court affirmed conditions prohibiting violent or threatening behavior and restricting access to places where children congregate, while remanding four other conditions for amendment, additional justification, or elimination.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand as to conditions 8, 19, 16, and 18. The trial court must provide additional justification, revise or eliminate condition 19, constrain or strike condition 8, amend condition 16 to remove waiver language, exclude computers and digital media from contraband, and expressly require reasonable suspicion for searches. The first

sentence of condition 18 banning home computer possession and unapproved Internet access is struck, while reasonable-suspicion-based monitoring and associated charges may remain.

CASES CITED

- State v. Cornell, 2014 VT 82, 197 Vt. 294, 103 A.3d 469
- State v. Whitchurch, 155 Vt. 134, 577 A.2d 690
- State v. Moses, 159 Vt. 294, 618 A.2d 478
- State v. Freeman, 2013 VT 25, 193 Vt. 454, 70 A.3d 1008
- State v. Campbell, 2015 VT 50, 120 A.3d 1148
- State v. Pettitt, 2014 VT 98, 197 Vt. 403, 104 A.3d 85
- State v. Putnam, 2015 VT 113, 130 A.3d 836
- State v. Lockwood, 160 Vt. 547, 632 A.2d 655
- State v. Sanville, 2011 VT 34, 189 Vt. 626, 22 A.3d 450
- State v. Johnstone, 2013 VT 57, 194 Vt. 230, 75 A.3d 642
- State v. Gauthier, 2016 VT 37
- State v. Rivers, 2005 VT 65, 178 Vt. 180, 878 A.2d 1070
- United States v. Peterson, 248 F.3d 79 (2d Cir. 2001)
- Griffin v. Wisconsin, 483 U.S. 868
- United States v. Knights, 534 U.S. 112
- State v. Bogert, 2013 VT 13A, 197 Vt. 610, 109 A.3d 883
- United States v. Perazza-Mercado, 553 F.3d 65 (1st Cir. 2009)
- United States v. Love, 593 F.3d 1 (D.C. Cir. 2010)
- United States v. Barsumyan, 517 F.3d 1154 (9th Cir. 2008)