

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE,	:	
	:	C.A. No. K11M-10-010
Plaintiff,	:	
	:	
v.	:	
	:	
DENISE KRYKEWYCZ,	:	
	:	
Defendant.	:	

Submitted: June 15, 2012
Decided: September 25, 2012

ORDER

Upon Defendant's Motion to Modify the Conditions
of her New Jersey Parole. *Denied.*

Aaron R. Goldstein, Esquire, Department of Justice, Wilmington, Delaware; attorney
for the State.

John R. Garey, Esquire, Dover, Delaware; attorney for the Defendant.

WITHAM, R.J.

ISSUE

_____1. Whether this Court has jurisdiction to entertain Defendant’s motion to amend the conditions of Defendant’s parole supervision imposed by the Delaware Department of Correction.

2. Whether Defendant’s Motion should be granted.

FACTS

_____Defendant Denise Krykewycz (hereinafter “Defendant”) is a New Jersey parolee who is currently under the supervision of the Delaware Department of Correction through the Interstate Compact for Adult Offender Supervision (hereinafter “the Compact”). On May 22, 2000, Defendant was convicted of sexual assault in the third degree,¹ aggravated sexual contact in the third degree, endangering the welfare of a child, and witness tampering. The indictment alleged that Defendant had purchased alcohol for her 15-year-old son and his five teenage friends, and had sexual contact with at least one of her son’s friends. Defendant was sentenced to a total of 36 years incarceration, which were served concurrently with the four-year sentence imposed on the sexual assault charge. In addition, Defendant was sentenced to community supervision for life (hereinafter “CSL”).² A panel of the Superior

¹Defendant was originally convicted of second-degree sexual assault, N.J.S.A. 2C:14-2c, but the trial judge downgraded this offense to a third-degree crime. *See State v. Krykewycz*, Civ. No. A-2373-00T3, at *2 (N.J. Sup. Ct. App. Div. July 2, 2002).

²Community Supervision for Life is the functional equivalent of lifetime parole. *See* N.J. Stat. § 2C:43-6.4(b) (“Persons who are serving a special sentence of parole supervision for life shall remain in the legal custody of the Commissioner of Corrections, shall be supervised by the Division of Parole of the State Parole Board, and shall be subject to the provisions and conditions set forth

Court of New Jersey, Appellate Division, later affirmed Defendant's conviction.

Defendant was granted parole on August 21, 2005. As an offender sentenced to CSL, express conditions of Defendant's parole include the requirements that she participate in a polygraph examination on at least an annual basis; refrain from the use of any device for the purpose of social networking; cooperate in any medical and/or psychological examinations or tests as directed by the assigned parole officer; and participate in and successfully complete an appropriate community or residential counseling or treatment program as directed by her parole officer. Defendant underwent psychological evaluations and sex offender risk assessments conducted by Mary Anne Giello, a licensed clinical social worker.³ Giello concluded that Defendant posed a low risk of reoffending, and the Defendant "does not exhibit evidence of compulsive behavior or pedophilic interest."

On September 26, 2011, Defendant registered as a sex offender with the Delaware State Police after moving to Dover, Delaware. Pursuant to the Compact, New Jersey made a transfer request on Defendant's behalf, asking Delaware to accept responsibility for the supervision of Defendant's parole. The Department of

in [N.J. Stat. § 30:4-123.51b, N.J. Stat. § 30:4-123.59 to -123.63, and N.J. Stat. § 30:4-123.65]."). A person sentenced to CSL may petition the Superior Court of New Jersey from release of that supervision if 15 years has passed from the date of the last conviction or release from incarceration, whichever is later, and upon proof by clear and convincing evidence that the offender poses no threat to the safety of others if released from parole supervision. *See* N.J. Stat. § 2C:43-6.4(c).

³Among the tools utilized by Ms. Giello were the Minnesota Sex Offender Screening Tool, the Sex Offender Needs Assessment Rating Static-99, and the Outpatient Sex Offender Treatment Needs Progress Scale. *See* Def. M. For Relief, Ex. B, at 18.

Correction agreed to the transfer. Defendant signed a form consenting to the Department of Correction's conditions of sex offender supervision, which included, among other requirements, that she "participate in sex offender assessment, evaluation, and treatment as determined by the Department of Correction," and submit to polygraph testing.

On March 5, 2012, Defendant moved for an order restricting the Department of Correction from imposing additional conditions of her parole on the grounds that they are impermissible special conditions that the Compact does not authorize Delaware to impose. This Court stayed the administration of a polygraph examination scheduled for March 26, 2012 pending the resolution of Defendant's motion.

DISCUSSION

Defendant argues that Title 11, Section 4332 imbues this Court with the authority to modify those conditions of her parole imposed by the Department of Correction, namely that she submit to further psychological evaluations and polygraph testing. The State moves to dismiss Defendant's motion on the grounds that this Court lacks jurisdiction over the subject matter.

Title 11, Section 4332 of the Delaware Code states that "nothing in this chapter shall limit the authority of this court to impose or modify any general or specific conditions of probation or suspension of sentence."⁴ Although this section has been interpreted to provide a mechanism by which this Court may review conditions of

⁴11 *Del. C.* § 4332(a).

probation,⁵ it has not yet been interpreted to give parolees a similar right. The Department of Correction and the Office of Probation possess broad authority to impose conditions in connection with the supervision of offenders released to the community.⁶ Therefore, this statute does not confer upon this Court the authority to relieve Defendant from the conditions of her parole.

Moreover, the modification of Defendant's supervision could jeopardize the State of Delaware's status as a signatory of the Interstate Compact for Adult Offender Supervision (hereinafter "the Compact"). Delaware and New Jersey are both signatories of the Compact,⁷ which is a "formal agreement between member states that seeks to promote public safety by systematically controlling the interstate movement of certain adult offenders."⁸ The Interstate Commission for Adult Offender Supervision (hereinafter "the Commission" or "ICAOS") was established by the Compact and has promulgated rules governing the transfer of supervision from a sending state to a receiving state.⁹ The ICAOS rules are binding in the compacting

⁵*See Dordell v. State*, 850 A.2d 302, at *1 (Del. 2004) (unpublished table decision).

⁶*See id.*; 11 *Del. C.* § 6502(a).

⁷*See* 11 *Del. C.* § 4358; N.J.S.A. 2A:168-27.

⁸Introduction, Interstate Comm'n for Adult Offender Supervision Rules (March 1, 2012) [hereinafter "ICAOS Rules"], *available at* http://www.interstatecompact.org/Portals/0/library/legal/ICAOS_Rules.pdf.

⁹For the purposes of the present motion, New Jersey is the sending state, and Delaware is the receiving state. *See* ICAOS Rule 1.101.

states and have the force and effect of law in Delaware and New Jersey.¹⁰ The failure of state, judicial, or executive branch officials to comply with the terms of Compact and its rules could result in the state defaulting on its contractual obligations under the Compact.¹¹

A sending state does not relinquish jurisdiction over an offender simply by virtue of transferring her supervision.¹² A receiving state shall supervise an offender transferred under the Compact in “a manner determined by the receiving state and consistent with the supervision of other similar offenders sentenced in the receiving state.”¹³ A receiving state may even impose special conditions on an offender transferred under the statute.¹⁴ Notwithstanding these directives, the sending state retains jurisdiction over the offender for the purposes of probation or parole

¹⁰11 *Del. C.* § 4358; N.J. Stat. § 2A:168-27.

¹¹ See ICAOS Rule 6.103(a)-(b) (detailing the grounds for default and penalties that the Commission may impose against a defaulting state, which include fines, remedial training, and/or suspension or termination of membership in the Compact).

¹²See ICAOS Advisory Opinion No. 3-2008 at 3 (Nov. 19, 2008) (noting that Rule 5.101 vests sole discretion in the sending state to retake an offender at any time); see also *ICAOS Bench Book for Judges and Court Personnel* 80 (2012) [hereinafter “Bench Book”] (“The transfer of an offender’s supervision pursuant to an interstate compact does not deprive the sending state of jurisdiction over the offender, *unless it is clear from the record that the sending state intended to relinquish jurisdiction.*”) (emphasis added).

¹³ICAOS Rule 4.101.

¹⁴See ICAOS Rule 4.103(a).

revocation.¹⁵ The Compact does not give the receiving state the authority to revoke the probation or parole imposed by authorities in a sending state.¹⁶ In the event of a significant violation of the conditions of supervision, the receiving state must notify the sending state of the violation,¹⁷ and the sending state must then respond to the receiving state by informing it of the action the sending state intends to take.¹⁸ In sum, the Compact contemplates that in the event that an offender violates the conditions of her supervision, the courts of the sending state have jurisdiction over any subsequent adjudication. Accordingly, the Compact contemplates that it is the *sending state* that adjudicates parole or probation violations.

Neither the Compact rules nor current case law address whether courts in a receiving state have jurisdiction to review post-transfer conditions imposed by the receiving state's supervising authority. Defendant contends that this court has the authority to review any post-transfer modifications or additions to the conditions of her supervision. But Defendant has failed to show that the conditions imposed by the Delaware Department of Correction deviate in any way from the CSL conditions statutorily imposed by the State of New Jersey. Defendant was aware of, and

¹⁵*See, e.g., Scott v. Commonwealth of Virginia*, 676 S.E.2d 343, 348 (Va. App. 2009) (holding that the Compact did not give Ohio, the receiving state, the authority to revoke the probation imposed on the defendant by Virginia, the sending state).

¹⁶*See id.* at 347.

¹⁷ICAOS Rule 5.103-1(a).

¹⁸*Id.*

consented to, annual polygraph examinations, medical and/or psychological examinations, and counseling as conditions of her parole. Moreover, Defendant signed a second consent form agreeing to participate in “sex offender assessment, evaluation, and treatment as determined by the Department of Correction.” The Compact “does not give the receiving state the authority to revoke the probation or parole imposed by authorities in a sending state.”¹⁹

Assuming the Department of Correction imposed special conditions of supervision on Defendant, nothing in the Compact prohibits Delaware from imposing its own testing requirements on an offender after the transfer of her parole supervision.²⁰ The Compact merely requires that the testing requirements apply equally to out-of-state and in-state offenders.²¹ An offender’s failure to meet additional requirements imposed by a receiving state may be grounds for retaking.²² In sum, neither the Compact nor 11 Del. C. § 4332 grant this Court jurisdiction to

¹⁹*Bench Book* 84-85; *see also Peppers v. State*, 696 So.2d 444, 445 (Fla. Dist. Ct. App. 1997).

²⁰*See State v. Warner*, 760 N.W.2d, at *5 (Iowa Ct. App. Nov. 26, 2008).

²¹*See* ICAOS Rule 4.101.

²²*See Critelli v. State*, 962 So.2d 341, 344 (Fla. App. 5th D. 2007). In *Critelli*, the Fifth District Court of Appeal upheld Colorado’s imposition of the additional condition of supervision that the probationer “submit ... to any program of psychological or physiological assessment and monitoring at the direction of the probation officer or treatment provider.” *Id.* at 342. *See also* ICAOS Rule 4.103-1 (“Failure of an offender to comply with special conditions or additional requirements imposed by a receiving state shall form the basis of punitive action in the sending state notwithstanding the absence of such conditions or requirements in the original plan of supervision issued by the sending state.”).

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adjudicate the merits of Defendant's motion for relief from the conditions of her parole. Defendant's request for a modification of the conditions of her parole appropriately rests with the New Jersey State Parole Board.²³

CONCLUSION

Defendant's motion for relief from the conditions of her supervision is *denied*.
IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh
oc: Prothonotary
xc: Aaron R. Goldstein, Esquire
John R. Garey, Esquire
File

²³Defendant, as a parolee, may apply to the board for a modification of the conditions of parole. See N.J. Stat. § 30.4-123.61(c).