

NOTICE

*Memorandum decisions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.*

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JACK RUEBEN SHAW,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12281  
Trial Court No. 3AN-05-7661 CR

MEMORANDUM OPINION

No. 6631 — May 9, 2018

Appeal from the Superior Court, Third Judicial District,  
Anchorage, Philip R. Volland, Judge.

Appearances: Morgan White, Assistant Public Defender, and  
Quinlan Steiner, Public Defender, Anchorage, for the Appellant.  
Nancy R. Simel, Assistant Attorney General, Office of Criminal  
Appeals, Anchorage, and Jahna Lindemuth, Attorney General,  
Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock,  
Superior Court Judge.\*

Judge MANNHEIMER.

The defendant in this case was ordered, as a condition of probation, to  
successfully complete sex offender treatment. On the day that the defendant's period of

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\* Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska  
Constitution and Administrative Rule 24(d).

probation expired, the State filed a petition to revoke probation, alleging that the defendant failed to make good-faith efforts to complete the treatment. After finding this allegation to be proved, the superior court extended the defendant's probation by 18 months and again ordered him to complete sex offender treatment.

The defendant now appeals, contending that the superior court lost its jurisdiction over him when his period of probation expired — and that even if the court continued to have jurisdiction over him, the court lacked good cause to revoke his probation. We conclude that the superior court had continuing jurisdiction to enforce the defendant's conditions of probation, and we further conclude that there was good cause for the court to revoke the defendant's probation. We therefore affirm the judgement of the superior court.

#### *Underlying facts*

In 2006, Jack Rueben Shaw was convicted of attempted first-degree sexual abuse of a minor. He was sentenced to serve 5 years in prison, with another 5 years suspended, and probation for 5 years.

After serving the 5-year prison sentence, Shaw was released to probation. One of Shaw's conditions of probation required him to successfully complete sex offender treatment as ordered by his probation officer, and not to discontinue treatment without the approval of his probation officer.

In May 2014, the superior court imposed 1 year of Shaw's suspended jail time, after finding that Shaw had failed to make good-faith efforts to engage in sex offender treatment.

Following Shaw's release from this sentence, Shaw re-started sex offender treatment with Dr. Roger Graves. However, Shaw's probation expired on August 25,

2014, before Shaw completed this treatment. After Shaw realized that he was no longer on probation, he informed Dr. Graves that he was “off paper”, and that he did not intend to participate in further treatment.

On the day that Shaw’s probation expired, the State filed a petition to revoke Shaw’s probation. In its petition, the State alleged that Shaw had violated his probation by failing to complete his sex offender treatment from the time the superior court released Shaw back to probation until August 25, 2014, when Shaw’s probation expired.

Based on the testimony presented at the ensuing adjudication hearing, the superior court found that Shaw had not progressed at all in his sex offender treatment during those months, and that Shaw’s lack of progress was due to Shaw’s lack of “engagement” — his “attitude [toward the] treatment.” The court concluded that Shaw had “failed to meaningfully engage in any treatment”, and that he “did not in good faith undertake his ... probation obligation”.

Based on these findings, the superior court extended Shaw’s probation by 18 months, and the court again ordered Shaw to participate in sex offender treatment.

*Shaw’s argument that the superior court lost its jurisdiction over him when his probation expired on August 25, 2014*

Shaw argues that even if he violated his probation by failing to make good-faith efforts to engage in sex offender treatment, the superior court had no authority to enforce Shaw’s conditions of probation after his period of probation expired on August 25, 2014.

Shaw acknowledges that, under this Court’s decision in *Galaktionoff v. State*, 733 P.2d 628, 630 (Alaska App. 1987), a sentencing court has the authority to

retrospectively revoke a defendant's probation at any time within the maximum period of probation specified in AS 12.55.090 — even after the defendant has completed probation supervision — if it is later discovered that the defendant committed a crime while on probation.

But Shaw argues that the holding in *Galaktionoff* is limited to situations where the defendant's violation of probation is, itself, an independent crime. Shaw contends that the holding in *Galaktionoff* does not extend to situations like his, where a defendant violates probation in some fashion other than committing a new crime.

It is true that the facts of *Galaktionoff* involved the defendant's commission of a new crime, but our holding in *Galaktionoff* was not limited to those facts. Rather, we explained in *Galaktionoff* that Alaska's statutes pertaining to the revocation of probation were modeled on the corresponding federal statutes — and that these federal statutes were uniformly interpreted to authorize a sentencing court to revoke a defendant's probation at any time during the maximum probationary period “so long as *the acts justifying the revocation* occur within [the] probationer's formal period of probation.” *Galaktionoff*, 733 P.2d at 630 (emphasis added).

The language of *Galaktionoff* is not limited to violations of probation which constitute independent crimes. And Shaw advances no convincing argument why this language should be interpreted in the narrow way he proposes.

We hold that *Galaktionoff* applies to non-criminal violations of probation, and that the superior court therefore had the authority to revoke Shaw's probation.

*Shaw's argument that the superior court lacked good cause to revoke his probation and to extend his period of probation by 18 months*

Shaw argues that even if the superior court had the authority to revoke his probation, the evidence presented to the superior court failed to establish that there was good cause to revoke his probation. In the alternative, Shaw argues that even if there was good cause to revoke his probation, the superior court was clearly mistaken in its disposition decision — *i.e.*, clearly mistaken in extending Shaw's probation by 18 months and ordering him to again engage in sex offender treatment.

We have reviewed the evidentiary record in the superior court, and it supports the superior court's conclusions that Shaw failed to make good-faith efforts to participate in sex offender treatment, and that this is why he failed to make material progress in that treatment.

The record also supports the superior court's decision to extend Shaw's period of probation. (We note that this was a lenient sentence; the superior court could have imposed some or all of Shaw's remaining suspended jail sentence.)

*Conclusion*

The judgement of the superior court is **AFFIRMED**.