

Circuit Court for Montgomery County
Case No. 136380C

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0233

September Term, 2023

GRAHAM SCHIFF

v.

STATE OF MARYLAND

Arthur,
Leahy,
Friedman

JJ.

Opinion by Friedman, J.

Filed: July 10, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to MD. RULE 1-104(a)(2)(B).

In this case, Appellant Graham Schiff appeals the denial of his *pro se* motion to modify the conditions of his probation on the grounds that they violate his constitutional rights to due process, equal protection, and free speech, and constitute an illegal sentence. For the reasons that follow, we affirm the judgment of the Circuit Court for Montgomery County.

BACKGROUND

In 2018, Schiff was convicted of stalking. Following that conviction, in 2019, he began sending letters and emails to the Assistant State’s Attorney (“ASA”) who had prosecuted his case, as well as to “others professionally connected to her[,]” including another prosecutor in the office and at least two circuit court judges. *Schiff v. State*, 254 Md. App. 509, 517-18, 523 (2022). The ASA never responded to the communications, which were personal in nature and so disturbing that she obtained a peace order against Schiff. *Id.* at 521-22. Moreover, “when Schiff’s letters became more numerous and contained ‘more concerning information,’” the Montgomery County State’s Attorney’s Office filed a criminal information charging Schiff with stalking, failure to comply with a peace order, and harassment. *Id.* at 522-23. After a jury trial in May 2021, at which Schiff represented himself, Schiff was found guilty of stalking and harassing the ASA. *Id.* at 524-25. The court sentenced him to a total term of five years incarceration, with all but 707 days suspended, and awarded him 707 days credit for time served. The court then placed Schiff on a five-year term of supervised probation. *Id.* at 525.

In addition to standard conditions of probation, Schiff’s probation was subject to certain special conditions, including:

28. Have no contact with [the victim], or any employee of the Montgomery County State’s Attorney[’]s Office outside of official business.
29. Do not enter or be found near/within a two-mile radius of the Montgomery County Circuit Ct. located at 50 Maryland Ave., Rockville, MD 20850 unless the sheriff[’]s department is notified 48 hours prior.

32. Electronic monitoring with stay-away alert technology.
33. ... Notify the sheriffs at least 48 hours before appearing at the Montgomery County Circuit Court located at 50 Maryland Ave., Rockville, MD 20850.

These conditions were specifically requested by the State and the victim. Schiff, who represented himself at sentencing, indicated that he generally agreed with them, but stated that, while he was representing himself in this and other cases, he would like to be able to go to the courthouse whenever he felt like it. He further asserted that, if his “cases are eventually closed [the court] could impose, you know, the sheriff’s thing because then [he] would have no reason to go to the courthouse[.]” With regard to the GPS monitoring, he stated that “GPS monitoring would be appropriate, you know, maybe for a year, two, something like that, and then if I’m doing well with it, you know, allowing me to go off it, but I am just asking for the chance to rehabilitate my life.”

The court adopted the special conditions urged by the State and the victim and declined Schiff’s proposal to limit their duration to a year or two. Rather, the court advised Schiff that he could “request a modification if he felt he was doing well.” The court stated that it would “rather do the maximum as opposed to doing the minimum, and having to come back and increase it.”

On direct appeal, this Court rejected Schiff’s contentions that the evidence was insufficient to sustain the convictions and that the communications that formed the basis of those convictions were protected by the First Amendment. *Id.* at 546-47. Schiff did not challenge his sentence or the conditions of probation.

Approximately 18 months after his sentencing, on January 18, 2023, Schiff, filed a *pro se* “Motion for Modification of Probation” in which he requested that the court “modify the probation in this case, by removing the GPS-Ankle Monitor, and by removing the no-contact order directed at members of the State Attorney[’s] Office.” He asserted that the “need for this motion, stems from the fact that the fake victim in this fake case, is no longer employed at the SAO.” He further stated that, “[t]he fact that [he] often criticizes individuals who work at the courthouse, such as judges and prosecutors, does not in any way justify banning him from the courthouse via a case in which the fake victim no longer works there.” He claimed that he “would like to access services exclusive to the courthouse, including, but not limited to: [e]xamining case files in the clerk’s office, using the law library, and taking advantage of free notary services.” He maintained that, “[b]ecause the fake victim no longer works at the SAO,” the condition of probation barring him from “any contact with the SAO, except for official business ... is plainly unconstitutional as it relates to free speech, and is so arbitrary and unreasonable that it deprives [him] of due process.”

On March 9, 2023, the circuit court denied Schiff’s motion without a hearing.

DISCUSSION

Before proceeding further, we pause to address the State’s contention that the judgment of the circuit court denying Schiff’s motion to modify conditions of his probation

is not an appealable judgment. The State recognizes that this Court has held that “a trial court’s order modifying terms of a probation is an appealable final judgment[,]” *Russell v. State*, 221 Md. App. 518, 526-27 (2015), but maintains that the circuit court’s denial of a motion to modify conditions of probation is not.

For purposes of an appeal, a “final judgment is one that either determines and concludes the rights of the parties involved or denies a party the means to prosecute or defend his or her rights and interests in the subject matter of the proceeding.” *Douglas v. State*, 423 Md. 156, 171 (2011) (cleaned up). In determining whether an order is a final appealable judgment, we also consider “whether any further order is to be issued or whether any further action is to be taken.” *Id.* (cleaned up).

When a sentencing court grants a motion to modify, unless there is some indication that the terms of probation will be reconsidered at a future time, the modification is intended to be a final resolution. *Russell*, 221 Md. App. at 526. By changing the conditions of probation, a sentencing court, in essence, modifies a sentence and the modification of a sentence may be an appealable judgment. *See Hoile v. State*, 404 Md. 591, 614 (2008) (explaining that the granting of a motion to revise a sentence constitutes the imposition of a new sentence, which “resurrects the penalty portion of a judgment ... and the modified sentence becomes the appealable order”). Thus, an order modifying probation to add conditions is a final judgment subject to appeal. *Russell*, 221 Md. App. at 526-27.

Denying a motion to modify conditions of probation imposed at sentencing is, however, distinct from granting a motion to add conditions of probation after sentencing. If a motion to modify conditions of probation is denied, Maryland Rule 4-346(b) does not

limit a probationer’s right to seek a modification to a single request. When “petitions may be filed repeatedly and the denial of a single petition does not preclude [a petitioner] from filing another[,]” the decision is not final for appeal purposes. *Fuller v. State*, 397 Md. 372, 385, 394 (2007). We consider a Rule 4-346(b) motion to modify conditions of probation to be in the nature of a Rule 4-345(e) motion to modify a sentence, the denial of which is generally not appealable either. *See Hoile*, 404 Md. at 617-18 (explaining that the denial of a motion to modify a sentence that does not allege an error of law, but rather is addressed to the discretion of the court, is not subject to appeal). Thus, the denial of a Rule 4-346(b) motion to modify conditions of probation that is addressed solely to the discretion of the sentencing court is not an appealable judgment.¹

That said, however, there may be instances where the court’s refusal to modify conditions of probation is appealable, such as where a probationer alleges that a particular condition is unlawful and, thereby, renders the sentence inherently illegal. In such instances, the Rule 4-346(b) motion is more in the nature of a Rule 4-345(a) motion to correct an illegal sentence, the ruling upon which is an appealable judgment. Here, Schiff,

¹ When preserved, a defendant could challenge the imposition of conditions of probation upon direct appeal or at any time in a Rule 4-345(a) motion to correct an illegal sentence when alleging that the condition is illegal. *See Meyer v. State*, 445 Md. 648, 682 (2015) (“If the sentence is not illegal, the validity of the condition of probation must be addressed on an appeal of the final judgment and sentence, rather than during a proceeding involving charges of violation of probation.”); *Russell*, 221 Md. App. at 527 (“[A]llegedly unlawful conditions of probation may be challenged at any time as an illegal sentence under Rule 4-345(a).”).

who continues to represent himself on appeal, presents four questions for appellate review, which we quote:

1. Whether a probation condition where a defendant is placed on a GPS-Ankle monitor and banned from a two-mile radius violates due process and/or if the fake victim is not at the area where he is banned from?
2. Whether denying a defendant access to the state courts via an arbitrary probation condition, constitutes a due process and/or equal protection violation?
3. Whether a probation condition which imposes a unilateral ban on contacting county prosecutors violates a defendant’s first amendment free speech and/or 14th amendment equal protection rights and/or 14th amendment due process, if there is no rational basis to restrict his speech?
4. Whether as a matter of first impression, if a probation condition which becomes illegal later on, but was legal at the time of sentencing, constitutes an illegal sentence?

Because Schiff, in essence, maintains that the conditions he challenges render his sentence illegal, we will assume that Schiff’s appeal is properly before us. Nonetheless, we are not persuaded that the special conditions are illegal, unreasonable, or lacking a rational basis to the offenses for which he was convicted.

When a sentencing court “exercise[es its] authority to place a defendant on probation, the court engages in an act of clemency or leniency, whereby the defendant maintains his or her freedom.” *Allen v. State*, 449 Md. 98, 110 (2016). The court has “broad discretion to impose conditions that curtail the defendant’s liberty while on probation.” *Id.* at 111 (citations omitted). This broad discretion, however, “is limited in several important respects: a condition of probation must not be vague, indefinite or uncertain; conditions of probation must not be arbitrary or capricious; conditions of probation must ... be

constitutional; conditions of probation must not exceed statutory limits; and conditions of probation must be reasonable and have a rational connection to the offense.” *Id.* (cleaned up). Even so, a condition “which compels a defendant to give up a fundamental or constitutional right is not in and of itself unconstitutional or invalid[,]” so long as the condition is related to the crime of which the defendant has been convicted and it has a reasonable relation to future criminality. *Henson v. State*, 212 Md. App. 314, 327-328 (2013) (cleaned up) (holding that a condition prohibiting a probationer him from working or volunteering “in any capacity in election campaigns” was reasonably related to the probationer’s conviction for conspiring to violate the election laws and was narrowly tailored and rational).

Schiff asserts that he “is on probation for stalking and harassment, based on speech which does not constitute any crime” and, as such, “his continuance on probation constitutes a due process violation which is known to the system, and imposed on him as a means of torture.”² He maintains that the “fake victim no longer works at the place Schiff is banned from” and, therefore, “the probation conditions of GPS and two-mile radius ban are so arbitrary and unreasonable, that it deprives him of 14th amendment due process and equal protection.” He argues that the court “refuses to remove Schiff’s GPS-Ankle Monitor and two-mile ban from Rockville, MD simply because she’s upset Schiff refuses to partake in her narcissistic drama game known as ‘Big Government Fancy.’”

² As noted, on direct appeal this Court rejected Schiff’s argument that his actions which formed the basis of his stalking and harassment convictions were protected by the First Amendment. 254 Md. App. at 546-47. Accordingly, we need not and shall not revisit that issue.

As discussed in our opinion affirming his convictions on direct appeal, Schiff sent numerous communications to the victim at her professional email address and to third parties also connected to or employed by Montgomery County, including another ASA and a police officer. *Schiff*, 254 Md. App. at 518-24. Schiff also made inappropriate and irrelevant personal references to the victim in communications he made to judges in the Circuit Court for Montgomery County. *Id.* at 523. Thus, we are not persuaded that the sentencing court abused its discretion in imposing the special condition of probation that prohibits Schiff, during the probationary term, from contacting the victim “or any employee of the Montgomery County State’s Attorney[’]s Office *outside of official business.*” (Emphasis added.)

For the same reasons, we are not convinced that the sentencing court abused its discretion by imposing the condition that Schiff be subject to electronic monitoring and that he notify the Sheriff’s Department 48 hours in advance prior to appearing at the Circuit Court for Montgomery County or within a 2-mile radius thereof. The victim in this case was so fearful of Schiff that she obtained a peace order against him. *Schiff*, 254 Md. App. at 521. At trial on the stalking and harassment charges, the victim testified about the “serious emotional distress” Schiff’s communications had caused her and how she had to modify her living arrangements and security measures. *Id.* at 525. Given that the victim is an attorney who reasonably may frequent the Circuit Court for Montgomery County regardless of whether she is still employed as a prosecutor with the Montgomery County State’s Attorney’s Office, we are not persuaded that requiring Schiff to give 48 hours prior

notice before appearing in the courthouse or in a 2-mile radius thereof is unreasonable.³ *See Meyer v. State*, 445 Md. 648, 680 (2015) (“[A] defendant [on probation] may be required to comply with a standard of conduct that limits his or her liberties to help the defendant avoid incarceration, become a productive member of society, and promote public safety.”).

Finally, we are not persuaded that the sentencing court abused its discretion in denying Schiff’s motion to modify the special conditions of probation. At sentencing, the court had informed Schiff that he could later file a motion to modify the conditions of probation “if he felt he was doing well.” Schiff’s motion makes clear, however, that he has failed to accept that his actions constituted the criminal offenses of stalking and harassment. He made repeated references in his motion to the “fake victim,” the “fake case,” and asserted that “the fake victim in this case, created a number of fabrications about [him], in order to justify using this court to torture him.” In short, given that his motion indicates that he has failed to recognize or accept that his behavior was criminal, or even inappropriate, we conclude that the court did not abuse its discretion in denying the motion.

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**

³ There is no evidence in the record before us substantiating Schiff’s claim that the victim is no longer employed with the Montgomery County State’s Attorney’s Office. But even if she is not, we would not simply assume that she is no longer a practicing attorney who may conduct business at the courthouse.