

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Fall 2026 Term

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 24-115

STATE OF WEST VIRGINIA,
Plaintiff Below, Respondent,

v.

JEREMY JARRETT,
Defendant Below, Petitioner.

Appeal from the Circuit Court of Kanawha County
The Honorable Jennifer F. Bailey, Judge
Case No. 09-F-497

AFFIRMED, IN PART, REVERSED, IN PART
AND REMANDED

Submitted: September 8, 2026

Filed: October 28, 2026

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JUSTICE FLANIGAN delivered the Opinion of the Court.

SYLLABUS BY THE COURT

1. “When reviewing an order modifying or revoking a defendant’s supervised release under West Virginia Code § 62-12-26(h), we apply a three-pronged standard of review. We review the circuit court’s final order and decision to modify or revoke a defendant’s supervised release under an abuse of discretion standard; we review challenges to findings of fact under a clearly erroneous standard; and we review questions of law and interpretations of statutes de novo.” Syl. Pt. 1, *State v. White*, 249 W. Va. 532, 896 S.E.2d 698 (2023).

2. “Conditions of probation which are established or modified in the absence of either the accused or his counsel are void and unenforceable.” Syl. Pt. 5, *Louk v. Haynes*, 159 W. Va. 482, 223 S.E.2d 780 (1976).

3. A general condition of supervised release requiring a probationer to comply with the rules of supervision and the orders or directives of a supervising probation officer authorizes the officer to administer, implement, and enforce the conditions imposed by the sentencing court. It does not authorize a probation officer to substantively enlarge the conditions of supervised release by imposing a new restriction that materially expands the restraints on the probationer’s liberty beyond those imposed by the court. A condition so enlarged is void and unenforceable unless it is imposed by the circuit court after a

hearing at which the probationer is afforded the assistance of counsel, consistent with West Virginia Code § 62-12-26 and Rule 32.1(b) of the West Virginia Rules of Criminal Procedure.

4. A probationer who, as a condition of supervised release under West Virginia Code § 62-12-9(a)(4), is prohibited from residing with or exercising visitation with a minor child, and who petitions to modify that condition, bears the burden of demonstrating that the modification is in the best interest of the child.

FLANIGAN, Justice:

Petitioner Jeremy Jarrett appeals the Circuit Court of Kanawha County's February 2, 2024, order revoking his supervised release, sentencing him to a four-year term of imprisonment, and denying his motion to modify the conditions of his supervised release to allow him to have contact with his newborn daughter. In this appeal, Mr. Jarrett argues that the circuit court erred because (1) the probation officer enlarged the conditions of his supervised release by imposing supplemental conditions without affording him counsel or a hearing, in violation of West Virginia Code § 62-12-26, Rule 32.1 of the West Virginia Rules of Criminal Procedure, and due process; (2) certain supplemental conditions of his supervised release are void for vagueness; and (3) the State failed to present sufficient evidence to support the revocation. Mr. Jarrett also claims that the circuit court abused its discretion when it denied his motion to have contact with his newborn daughter.

For reasons set forth below, we hold that the circuit court erred when it revoked Mr. Jarrett's supervised release based on violations of supplemental conditions provided to him by a probation officer that amounted to substantive enlargements of the circuit court's previously imposed conditions, without a hearing or assistance of counsel. However, we conclude that the circuit court did not abuse its discretion when it denied Mr. Jarrett's motion to modify the conditions of his supervised release to allow him to have contact with his daughter. Consequently, we affirm in part, reverse in part, and remand this case for further proceedings consistent with this opinion.

I. FACTS AND PROCEDURAL BACKGROUND

In 2009, a Kanawha County grand jury charged Jeremy Jarrett with four counts of first-degree sexual abuse and one count of first-degree sexual assault. In 2010, Mr. Jarrett pleaded guilty to two counts of first-degree sexual abuse.¹ His victim was a nine-year-old girl; Mr. Jarrett was eighteen years old at the time of the crimes.

In April 2011, the circuit court sentenced Mr. Jarrett to consecutive terms of one to five years of imprisonment for each count plus fifty years of supervised release and entered an Order of Notification of Supervised Release (“2011 Order”) containing twenty-seven paragraphs of conditions. The circuit court explained the conditions in open court, gave Mr. Jarrett a written copy that he signed, and directed defense counsel to review the terms with him. Under the terms of the 2011 Order, Mr. Jarrett was required to “comply with the rules of supervision and other regulations of the Court and any orders or directives of the supervising officer.” The 2011 Order’s child-related restrictions barred employment or home services involving anyone under eighteen, relationships with anyone under eighteen, residing where a child under sixteen lives, and residing or working within 1,000 feet of a school, childcare facility, or the victim’s residence.

¹ W. Va. Code § 61-8B-7.

Mr. Jarrett was discharged from his term of imprisonment in February 2014 and began his fifty-year term of supervised release. Mr. Jarrett's supervising probation officer provided him with three additional documents—Sex Offender Conditions, Definitions of Terms Regarding Contact with Minors, and Computer Use Conditions. Mr. Jarrett acknowledged and initialed that he was subject to several conditions regarding his contact with minors, including that he was prohibited from (1) living in the same residence as a minor, exercising visitation with a minor, or having any contact with the victim; (2) being present at or within two blocks of any park, school, playground, swimming pool, daycare center, or other specific location where children are known to congregate unless approved by his probation officer; and (3) engaging in a dating, intimate, or sexual relationship with any person who has children under the age of eighteen. Mr. Jarrett was also required to report any incidental contact with minors within twenty-four hours. Contact with minors was defined to include "proximity contact" or "[b]eing in the geographic proximity of a minor where verbal and/or non-verbal communication could be established," ("2014 Terms").

In 2014, Mr. Jarrett violated the terms of his supervised release by having incidental contact with a minor,² and failing to report a cell phone. The circuit court revoked his supervised release and imposed a term of five years of imprisonment. It further

² Mr. Jarrett talked to a teenage girl, followed her into a store, and admitted interest in her.

ordered that upon his discharge, Mr. Jarrett was to complete the remainder of his supervised release and comply with the terms of the 2011 Order. When Mr. Jarrett was discharged from imprisonment in 2017, his probation officer provided him with a copy of the 2014 Terms and Mr. Jarrett acknowledged them.

Three months later, Mr. Jarrett violated his supervised release by failing to notify his probation officer of a sexual relationship and viewing pornography on a shared phone. The circuit court revoked Mr. Jarrett's supervised release and ordered him to serve five years of imprisonment. Again, the circuit court instructed Mr. Jarrett that upon discharge, he was to complete the remainder of his supervised release and comply with the terms of the 2011 Order. When Mr. Jarrett was discharged from his term of imprisonment in 2019, his probation officer provided Mr. Jarrett with the 2014 Terms and Mr. Jarrett acknowledged them. The probation officer also provided Mr. Jarrett a written order prohibiting him from having any contact with a minor child in any fashion without first petitioning the circuit court for modification.

In January 2023, Mr. Jarrett told his supervising officer that his wife was pregnant. The officer advised Mr. Jarrett to contact his counsel and request a hearing to modify the 2014 term and condition which prevented him from having contact with any minor. Mr. Jarrett requested a hearing, which was scheduled for later that year.

On August 15, 2023, Mr. Jarrett met with a probation officer, who instructed Mr. Jarrett that he was prohibited from going to the hospital if his wife went into labor prior to the hearing scheduled for the motion to have contact with his child after birth. That same day, Mr. Jarrett picked up his wife following her appointment with an obstetrician; his wife told Mr. Jarrett that her physician told her to report immediately to Charleston Area Medical Center's ("CAMC") Women's and Children's Hospital for an emergency cesarean section. Mr. Jarrett escorted his wife to the hospital and remained in the waiting room for several hours, leaving once to return with relatives.

Hospital staff contacted the probation office and reported that a registered sex offender was in a waiting room at the hospital where children were present. Officers arrested Mr. Jarrett at the hospital later that evening.

Thereafter, the State filed a petition to revoke Mr. Jarrett's probation, charging him with violating the conditions of his supervised release by (1) being present at or entering within two blocks of a location where children are known to congregate and (2) failing to leave the geographical proximity where verbal and non-verbal communications with minors could be established by loitering in the waiting room at CAMC Women's and Children's Hospital. Mr. Jarrett moved to dismiss, arguing that the conditions were void

because they were imposed by the probation officer without a hearing or counsel present in violation of West Virginia Code § 62-12-26(h)(2) and Rule 32.1(b) of the West Virginia Rules of Criminal Procedure. He further argued that the 2014 Terms were void for vagueness and not supported by the evidence.

At the October 2023 revocation hearing, the State called a medical social worker at CAMC Women's and Children's Hospital, who testified that on August 15, 2023, multiple nursing staff expressed concerns to her about Mr. Jarrett's presence in the hospital's waiting room because they were aware that he was a registered sex offender. The social worker observed Mr. Jarrett sitting in the second floor waiting room of the hospital, consulted the hospital's legal team, and then contacted the Kanawha County Probation Office to report the incident. The Corporate Director of Security for the hospital testified that security footage showed Mr. Jarrett arriving at the hospital and walking through the main lobby. Mr. Jarrett remained in the waiting room for several hours, where children were present. Officers arrested Mr. Jarrett at the hospital around 5:00 p.m. that day. Mr. Jarrett's probation officer testified that had Mr. Jarrett dropped his wife off at the hospital that day and left, there would have been no concerns about him violating the proximity to minors condition.

The circuit court found that Mr. Jarrett violated the conditions of his supervised release. Specifically, it found that the 2011 Order required Mr. Jarrett to

“comply with the rules of supervision and other regulations of the Court and any orders or directives of the supervising officer[,]” and that the 2014 Terms given to Mr. Jarrett by the probation department were simply a modification of the court’s 2011 Order. The circuit court further found that the challenged conditions were not void for vagueness. It then sentenced Mr. Jarrett to a term of four years of incarceration.

Mr. Jarrett had separately moved to modify the conditions of his supervised release to allow him to have contact with his newborn daughter and that motion was argued at sentencing. The State opposed his motion. The circuit court relied on Mr. Jarrett’s criminal history, presentence report admissions, and a therapist letter rating Mr. Jarrett as an “average/moderate risk” to reoffend, which noted that he would have “ample opportunity to offend” as a caretaker. The circuit court ultimately denied Mr. Jarrett’s request to modify the conditions of his supervised release to allow him to have contact with his daughter. However, the circuit court granted him “permission to seek supervised visitation with his daughter provided appropriate assurances for the child’s safety” could be demonstrated, and stated that visitation requests “must include supervision by a third party, and the approval of a treatment provider.”

II. STANDARD OF REVIEW

Mr. Jarrett appeals from an order revoking his supervised release. This Court has recently held that

[w]hen reviewing an order modifying or revoking a defendant's supervised release under West Virginia Code § 62-12-26(h), we apply a three-pronged standard of review. We review the circuit court's final order and decision to modify or revoke a defendant's supervised release under an abuse of discretion standard; we review challenges to findings of fact under a clearly erroneous standard; and we review questions of law and interpretations of statutes de novo.

Syl. Pt. 1, *State v. White*, 249 W. Va. 532, 896 S.E.2d 698 (2023).

III. DISCUSSION

Mr. Jarrett presents several arguments regarding the revocation of his supervised release. Because his first assignment of error is dispositive—we reverse the order revoking his supervised release on that ground—we decline to address his second and third assignments of error, which challenge the validity and enforcement of certain supplemental conditions and the sufficiency of the State's evidence supporting the revocation. Mr. Jarrett also argues that the circuit court abused its discretion in denying his motion to have contact with his newborn daughter.

A. Revocation Based on Supplemental Conditions of Supervised Release

We first address Mr. Jarrett's argument that the two conditions of his supervised release that he was found to have violated—a prohibition on being within two blocks of locations where children congregate, and a requirement that he leave the

geographic proximity in which verbal or non-verbal communication with minors could be established—were imposed by the Kanawha County Probation Department after his 2011 sentencing, without a hearing with counsel present. He argues that these conditions amount to substantive enlargements, are void and unenforceable, and that a revocation premised on them cannot stand. We agree.

Our extended supervision statute, West Virginia Code § 62-12-26, “provides that a court impose a period of extended supervision as part of the criminal sentence for certain specified offenses, and sets forth the manner in which the supervision is to be administered and enforced.” *State v. James*, 227 W. Va. 407, 414, 710 S.E.2d 98, 105 (2011). West Virginia Code § 62-12-26, also provides, in pertinent part, that “[a] defendant sentenced to a period of supervised release shall be subject to any or all of the conditions applicable to a person placed upon probation pursuant to the provisions of [West Virginia Code] § 62-12-9.” W. Va. Code § 62-12-26(f).

West Virginia Code § 62-12-9(a)(1) to (6) sets out mandatory conditions for probation, and West Virginia Code § 62-12-9(b) permits a circuit court to impose other conditions “which it may determine advisable.” *Id.* While the conditions of supervised release are subject to modification, a court may modify, reduce, or enlarge the conditions of supervised release only when “consistent with the provisions of the West Virginia Rules of Criminal Procedure relating to the modification of probation.” *Id.* Rule 32.1(b) of the

West Virginia Rules of Criminal Procedure in turn provides, in relevant part, that “[a] hearing and assistance of counsel are required before the terms or conditions of probation can be modified.”

By enacting West Virginia Code § 62-12-26, the Legislature codified a constitutional command this Court recognized decades ago. In Syllabus Point 5 of *Louk v. Haynes*, 159 W. Va. 482, 223 S.E.2d 780 (1976), we held that, “[c]onditions of probation which are established or modified in the absence of either the accused or his counsel are void and unenforceable.” Because supervised release conditions may be modified only in accordance with the rules governing probation modification, the same protections attach when the conditions of supervised release are enlarged. *State v. Hedrick*, 236 W. Va. 217, 778 S.E.2d 666 (2015).

The record establishes, and the State does not genuinely dispute, that the two conditions underlying the revocation of Mr. Jarrett’s supervised release, included as part of the 2014 Terms, were not among the terms set out in the 2011 Order that the circuit court reviewed with Mr. Jarrett, in open court and with counsel, at his original sentencing. Rather, they appeared in documents the probation department presented to Mr. Jarrett after his release—the Sex Offender Conditions and the accompanying definitions governing contact with minors—which together added numerous conditions not contained in the 2011 Order. The two conditions the circuit court found Mr. Jarrett violated were new. Critically,

they were never imposed, reviewed, or explained by the circuit court in a proceeding at which Mr. Jarrett was represented by counsel. Under *Louk* and Rule 32.1(b), conditions enlarged in that manner are void and unenforceable. Syl. Pt. 5, *Louk*, 159 W. Va. 482, 223 S.E.2d 780. Because those conditions were void and unenforceable, the revocation based on those conditions cannot stand.

The State advances two principal responses, but neither is persuasive. First, the State argues that Mr. Jarrett received all the process he was due at his 2011 sentencing, when the circuit court ordered him—in open court and with counsel—to “comply with the rules of supervision and other regulations of the Court and any orders or directives of the supervising officer,” and that this general condition authorized the probation officer to impose the later, more specific conditions without a further hearing. However, a general directive to follow the lawful instructions of a supervising officer only permits the officer to administer and carry out conditions the *court* has imposed. See e.g., *United States v. Amin*, 85 F.4th 727, 734 (4th Cir. 2023) (“[A]s long as the court orders the broad principle of guiding the condition of release and retains the ultimate authority over revoking release, the court may allow the probation officer to fill in many of the details for applying it.”); *Shifflett v. Commonwealth*, 903 S.E.2d 545, 555 (Va. Ct. App. 2024) (“the day-to-day administration and management of Shifflett’s treatment—counseling being the form of sex offender treatment prescribed by the circuit court—is directed by his probation officer—as set out in the supervised probation condition—but the counseling condition is the basis for

the court's requirement.”). A general directive to comply with the orders or directives of the supervising officer does not empower the probation officer to unilaterally and substantively enlarge the conditions of a probationer's supervised release, without the probationer receiving a hearing and counsel.

Under the conditions of supervised release, set forth in the 2011 Order, the circuit court prohibited Mr. Jarrett from “living or working within 1,000 feet of a school, childcare facility, or the victim's residence,” and from “dating minors, living with minors, and working with or around minors[.]” In contrast, the 2014 Terms and conditions provided by the probation department were significantly more restrictive on Mr. Jarrett's ability to move throughout the community. We therefore reject the State's assertion that the 2014 Terms were tethered to the implementation of the conditions set by the court. The 2014 Terms prohibited Mr. Jarrett from “being present at or within two blocks of any park, school, playground, swimming pool, daycare center, or other specific location where children are known to congregate,” and “being in the geographic proximity of a minor where verbal and/or non-verbal communication could be established.” To read the catch-all condition in the 2011 Order of supervised release as allowing the probation department to impose the enlarged, restrictive 2014 Terms, as the State proposes, would allow a probation officer to accomplish precisely what West Virginia Code § 62-12-26 and Rule 32.1(b) reserve for the circuit court, acting in a hearing at which counsel for the probationer is present. Simply stated, the due process protections this Court recognized in *Louk* cannot

be waived in advance by a boilerplate condition and then substantively enlarged, years later, by a probation officer acting unilaterally.

We hereby hold that a general condition of supervised release requiring a probationer to comply with the rules of supervision and the orders or directives of a supervising probation officer authorizes the officer to administer, implement, and enforce the conditions imposed by the sentencing court. It does not authorize a probation officer to substantively enlarge the conditions of supervised release by imposing a new restriction that materially expands the restraints on the probationer's liberty beyond those imposed by the court. A condition so enlarged is void and unenforceable unless it is imposed by the circuit court after a hearing at which the probationer is afforded the assistance of counsel, consistent with West Virginia Code § 62-12-26 and Rule 32.1(b) of the West Virginia Rules of Criminal Procedure. This holding is consistent with the plain intent of West Virginia Code § 62-12-26. *See T. Weston, Inc. v. Mineral Cnty.*, 219 W. Va. 564, 568, 638 S.E.2d 167, 171 (2006) ("Courts should favor the plain and obvious meaning of a statute as opposed to a narrow or strained construction.").

Second, the State relies on *State v. Hedrick*, 236 W. Va. 217, 778 S.E.2d 666 (2015), in which this Court rejected a procedural due process challenge to conditions of supervised release that probation officers added, and the probationer signed outside the presence of counsel. However, *Hedrick* is factually distinguishable from this case. In

Hedrick, the probationer's counsel promptly moved to strike the challenged conditions, and the court conducted a hearing, at which the probationer was represented by counsel, on the merits of those conditions before any alleged violation. When affirming the conditions of supervised release in *Hedrick*, this Court emphasized that such a proceeding did not occur in *Louk*. *Id.* at 224, 778 S.E.2d at 673. Critically, no comparable proceeding occurred in this case either. Mr. Jarrett never received a hearing with counsel on the supplemental conditions; he first challenged them after the State moved to revoke his supervised release for violating them. For this reason, *Hedrick* confirms, rather than defeats, Mr. Jarrett's claim: the court process that cured the defect in *Hedrick* was never afforded to him.³

We are mindful that supervised release must function in practice. Circuit courts carry heavy dockets, and probation officers necessarily exercise considerable judgment in the day-to-day supervision of those serving lengthy terms of extended supervision. Nothing in our decision today curtails that discretion or requires a circuit court to convene a hearing every time a probation officer takes a routine supervisory action. A probation officer may, without petitioning the court to conduct a hearing and furnish a probationer counsel under West Virginia Code § 62-12-26, take those actions that

³ The State also maintained that the 2014 Terms placed on Mr. Jarrett's supervised release were reasonable and rationally related to protecting the public. However, this argument does not change our analysis. The defect in this case is procedural, not substantive.

implement, administer or enforce a condition the sentencing court has already imposed. As the Fourth Circuit Court of Appeals has explained, “as long as the court orders the broad principle” guiding the conditions of release “and retains the ultimate authority over revoking release, the court may allow the probation officer to fill in many of the details for applying it.” *Amin*, 85 F.4th at 734.⁴

What a probation officer may not do, without first requesting a hearing before the court where the probationer is present with counsel under West Virginia Code § 62-12-26, is substantively enlarge the conditions of supervised release—that is, impose new conditions that materially expand the restraints on the probationer’s liberty beyond those the sentencing court ordered. The touchstone is whether the probation officer is carrying out a directive the court imposed or adding a new one. A directive that imposes a categorical prohibition the court did not order, or that meaningfully expands the geographic, associational, or other liberty restrictions the court set, works as a prohibited expansion of the court’s conditions, however reasonable the added restriction might be.

⁴ A probation officer may, for example, set and adjust reporting schedules and the manner of reporting; direct the day-to-day mechanics of a treatment, counseling, and/or testing program the court has required. *See generally*, *Shifflett*, 903 S.E.2d at 555; *United States v. Ortega*, 19 F.4th 831, 834 (5th Cir. 2021), *cert. denied*, — U.S. —, 142 S. Ct. 1460, 212 L.Ed.2d 548 (2022) (affirming a condition of supervised release that gave the probation officer discretion over the length of the probationer’s inpatient treatment “within a particularized eight-month window,” where the maximum duration of the condition was the expiration of the one-year term of supervised release).

The 2014 Terms illustrate the distinction: barring Mr. Jarrett from coming within two blocks of any location where children are known to congregate, and from any geographic proximity to a minor where communication could be established, did not merely implement the 2011 Order's prohibition on residing or working within 1,000 feet of a school, childcare facility, or the victim's residence. Rather, the 2014 Terms imposed materially greater restraints on Mr. Jarrett's freedom to move throughout the community. When a probation officer concludes that a broader restriction is warranted, West Virginia Code § 62-12-26 and Rule 32.1(b) supply the mechanism: the probation officer, through the State, may petition the circuit court, which may enlarge the conditions of supervised release after a hearing at which the probationer is afforded the assistance of counsel.

Accordingly, we reverse the circuit court's order revoking Mr. Jarrett's supervised release. Because this holding disposes of the revocation in full, it is unnecessary to address his second and third assignments of error.

B. Denial of Motion to Allow Contact with Newborn Child

The second question for resolution is whether the circuit court abused its discretion in denying Mr. Jarrett's motion to modify the conditions of his supervised release to allow him to have contact with his daughter, born in August 2023. While the circuit court denied Mr. Jarrett's request to modify the terms of his supervised release to allow

him to have contact with his child, at this time, it stated that it would consider supervised visitation pending an expert opinion. Mr. Jarrett argues that the court abused its discretion considering that his criminal conduct occurred over ten years ago, and he has not committed any new offenses since that time. He contends that he is adequately supervised by the probation office, which has administered polygraphs, observed his sex offender therapy, and required him to routinely meet with his probation officer. Mr. Jarrett argues that this level of supervision will ensure that he does not commit any offenses against his child. The State responds that the circuit court did not abuse its discretion, considering Mr. Jarrett's history, the facts and circumstances underlying the crime, as well as the prior revocations of his supervised release.

The condition Mr. Jarrett sought to relax is statutory. Because he was convicted of a qualifying sexual offense against a child, Mr. Jarrett was subject, as a condition of supervised release, to the prohibition of West Virginia Code § 62-12-9(a)(4), which provides, in pertinent part, that:

[r]elease on probation is conditioned upon the following:

. . . .

(4) That in every case in which the probationer has been convicted of an offense defined in . . . article eight-b . . . of [Chapter 61 of the West Virginia Code] against a child, the probationer may not live in the same residence as any minor child, nor exercise visitation with any minor child
Provided, That the probationer may petition the court of the

circuit in which he or she was convicted for a modification of this term and condition of his or her probation and the burden rests upon the probationer to demonstrate that a modification is in the best interest of the child.

Under this statutory scheme, a probationer who, as a condition of supervised release under West Virginia Code § 62-12-9(a)(4), is prohibited from residing with or exercising visitation with a minor child, and who petitions to modify that condition, bears the burden of demonstrating that the modification is in the best interest of the child.

Although it does not appear that this Court has squarely addressed the issue, the United States Court of Appeals for the Eighth Circuit confronted a similar challenge in *United States v. Stelmacher*, 891 F.3d 730 (8th Cir. 2018), when considering a probationer's appeal of the district court's decision denying his motion to modify the special conditions of his supervised release that limited his freedom to have contact with his minor daughter. Stelmacher pleaded guilty to possession of a firearm as an unlawful user of a controlled substance and the district court sentenced him to imprisonment and three years of supervised release. *Id.* at 732. As part of Stelmacher's sentence, the district court imposed special conditions of supervised release based on his prior conviction for fourth-degree sexual assault involving a minor; one condition prohibited contact with children under the age of 18 "without the prior written consent of the probation office." *Id.* At the time of his sentencing, Stelmacher had no children. However, the special condition specified that, in the event Stelmacher were to father or adopt a child, the "U.S. Probation Office shall work

with the defendant and the defendant's family to set up supervised communications and visits with the defendant's biological and legally adopted children." *Id.* After fathering a child, Stelmacher moved to modify the special conditions, requesting to have contact with his daughter. *Id.* The district court denied the request. "Without a current professional assessment of Stelmacher as a sex offender, the court concluded that the record did not support lifting the restriction on unsupervised contact with his daughter." *Id.* at 733.

On appeal, the Eighth Circuit affirmed, concluding that the district court did not abuse its discretion because "the special condition was 'reasonably related' to deterring future criminal conduct and protecting Stelmacher's daughter." *Id.* at 734. The court noted that it had "held in prior decisions that a criminal history involving sexual offenses against minors is sufficient to justify restrictions on contact with a defendant's own minor children." *Id.* (citing *United States v. Schultz*, 845 F.3d 879, 882–83 (8th Cir. 2017) and *United States v. Simons*, 614 F.3d 475, 481–82 (8th Cir. 2010)).

At the hearing on Mr. Jarrett's motion to modify the conditions of his supervised release, his counsel argued that it would be in the best interest of the child to have her father in her life. Conversely, counsel for the State argued that "having a father figure in the house is an important factor for children, of course, it is, but not exposing them to the possibility of abuse or a sexual assault or abuse is also important, and I think it outweighs the other." The State emphasized that the presentence materials reflected Mr.

Jarrett’s admissions that he was sexually aroused by young girls and that he had engaged in sexual acts with family members, including four female cousins and a younger brother. It also noted that Mr. Jarrett’s supervised release had been revoked twice—once in 2014 for incidental contact with a minor female to whom he admitted an attraction, and again in 2017 for failing to disclose a sexual relationship (with his father’s ex-girlfriend) and viewing pornography. The parties discussed the fact that Mr. Jarrett was sexually abused by his parents when he was a child, that “his mother sold him to other men, basically pimped him out[,]” and how that abuse could potentially impact the chance he would reoffend. The circuit court also considered a letter prepared by a therapist that indicated Mr. Jarrett “would still be considered average/moderate risk” of reoffending and that assuming a caretaking role as a father would afford him “ample opportunity to offend.”

The circuit court’s conclusion that Mr. Jarrett had not shown that contact would be in the child’s best interest, at this time, was neither arbitrary nor unreasonable. The court weighed Mr. Jarrett’s history, his own admissions, and the risk assessment he submitted, and it declined to place a newborn in his care, while leaving open the possibility of supervised visitation upon further expert evaluation. That measured disposition reflects a considered exercise of the discretion soundly committed to the circuit court. As the Supreme Court of the United States has recognized, “[t]he risk of recidivism posed by sex offenders is ‘frightening and high.’” *Smith v. Doe*, 538 U.S. 84, 103 (2003) (quoting *McKune v. Lile*, 536 U.S. 24, 34 (2002)). For these reasons, we discern no abuse of

discretion and affirm the circuit court's denial of Mr. Jarrett's motion to modify the conditions of his supervised release.

IV. CONCLUSION

For the foregoing reasons, the Circuit Court of Kanawha County's February 2, 2024, order is affirmed, in part, and reversed, in part. We affirm the circuit court's decision denying Mr. Jarrett's motion to modify the conditions of his supervised release to allow contact with his child. However, we reverse Mr. Jarrett's supervised release revocation and remand this case for further proceedings consistent with this opinion.

Affirmed, in part, reversed,
in part, and remanded.