

>> NEXT CASE ON THE DOCKET IS
DEMOTT VERSUS STATE.
WHENEVER YOU'RE READY.

>> MAY IT PLEASE THE COURT.
COUNSEL, MY NAME IS KEVIN HOLTZ.
I REPRESENT THE PETITIONER,
JUSTIN DEMOTT IN THIS CASE THAT
IS HERE BEFORE THE COURT.
THIS IS A, ASSISTANT PUBLIC
DEFENDER OUT OF THE 7th
CIRCUIT.

THIS CASE ALSO SEEMS FROM THE
7th CIRCUIT T WAS PLEA AND
SENTENCE, AN OPEN PLEA TO THE
COURT, NO NEGOTIATIONS.
ON COUNT ONE HE PLED TO TWO
COUNTS EVER SIMPLE CHILD ABUSE,
ONE COUNT OF AGGRAVATED CHILD
ABUSE, FIRST-DEGREE FELONY.
HE RECEIVED 144-MONTH PRISON
SENTENCE FOLLOWED BY FIVE YEARS
OF PROBATION.

IT IS ONE OF THE SPECIAL
CONDITIONS IMPOSED IN THAT
PROBATION THAT IS THE WHOLE
SUBJECT OF THIS--

>> LET ME ASK YOU THIS FROM THE
GET-GO.

THE CONDITION THAT YOU'RE HERE
ON--

>> YES, YOUR HONOR.

>> READ IN ENTIRETY WILL ABSTAIN
ENTIRELY FROM THE USE OF ILLEGAL
DRUGS AND WILL NOT ASSOCIATE
WITH ANYONE WHO IS ILLEGALLY
USING DRUGS.

I TAKE IT IS LATTER PART OF THAT
CONDITION YOU'RE HERE ON?

>> IT IS THE SECOND HALF, YOUR
HONOR, YES.

>> LET ME ASK YOU, WHAT DO YOU
SEE AS THE PURPOSE FOR THAT
CONDITION OF PROBATION?

>> MY BELIEF IS THAT THIS IS
MEANT TO JUST ADDRESS IF HE,
MR. DEMOTT, MY CLIENT WERE TO
WALK IN ROOM AND SOMEBODY IS
ILLEGALLY USING DRUGS AND HE
STAYED OR REMAINED HE IS IN
VIOLATION CLEARLY.

I THINK IT WAS MEANT TO ADDRESS WHEN A, WHEN AN INDIVIDUAL, A DEFENDANT OR PROBATIONER, IS IN THE ROOM IN THE PRESENCE OF SOMEBODY ENGAGED IN AN ILLEGAL ACT.

>> WELL I MEAN--

>> I CERTAINLY REALIZE PROBATION IS A MATTER OF GRACE AND I WOULD NOT TRY TO ARGUE THAT, OH, IF HE HAD A ROOMMATE WHO IS DRUG ADDICT HE WOULD BE OKAY TO DO THAT.

>> GOING BACK TO MY QUESTION, IF THE PURPOSE OF THE CONDITION IS TO SEPARATE OR KEEP PEOPLE WHO MAY HAVE A DRUG ISSUES AWAY FROM OTHER PEOPLE WHO ARE USING ILLEGAL DRUGS, THAT GOES A LONG WAYS INTO, REHAB, REHABILITATION AND SO ON.

I'M TRYING TO IN THINKING ABOUT THIS HOW A CONDITION WORDED THAT IS SPECIFIC ENOUGH TO COVER THIS AREA?

I MEAN WHAT ELSE DO YOU NEED TO SAY TO SOMEONE THEN, HEY, LISTEN YOU CAN'T HANG OUT WITH PEOPLE DOING DRUGS ILLEGALLY?

WHAT ELSE CAN YOU SAY?

>> I THINK, WHAT I LOOKED AT, I REALIZE THE RELIEF REQUESTED IN THE INITIAL BRIEF WAS TO STRIKE BUT I WOULD CERTAINLY BE, IF THERE WERE CLARIFICATION--

>> LET ME ASK YOU THIS.

IF THE WORD WILL FULLY WERE INSERTED IN THE CONDITION, WOULD THAT SATISFY THE CONCERN?

>> THAT HE WILLFULLY, IN WHICH PART OF THE CONDITION, YOUR HONOR?

>> REPEAT IT BACK TO ME.

>> THE--

>> I DON'T HAVE RIGHT--

>> OKAY.

YOU WILT ABSTAIN-- I WILL, I WILL ANSWER, YOU WILL ABSTAIN ENTIRELY FROM THE USE OF ILLEGAL DRUGS AND YOU WILL NOT ASSOCIATE

WITH ANYONE WHO IS--
>> NOT WILLFULLY ASSOCIATE.
NOT WILLFULLY ASSOCIATE, WOULD
THAT NOT SOLVE YOUR PROBLEM.
>> I THINK SOMETHING LIKE, YES.
>> OKAY.
THAT WOULD SOLVE YOUR PROBLEM,
WHY DOESN'T THE CURRENT LAW
SOLVE YOUR PROBLEM?
BECAUSE WE KNOW THAT PEOPLE CAN
NOT BE FOUND TO HAVE VIOLATED A
CONDITION OF PROBATION UNLESS
THERE IS SUBSTANTIAL VIOLATION,
STATUTE I THINK SAYS MATERIAL,
BUT WE KNOW THAT IT HAS TO BE
WILLFUL?
THE CASE LAW ESTABLISHES THAT WE
ONLY VIOLATE PEOPLE FOR WILLFUL
VIOLATIONS.
ISN'T THAT CORRECT?
>> THAT IS CORRECT, YOUR HONOR
BUT--
>> THIS SEEMS LIKE AN ARGUMENT
OVER, IF YOU AGREE THAT THE
INSERTION OF THE WORD WILLFUL IN
THAT CONDITION WOULD SATISFY
YOUR CONCERN, THAT'S, THE SAME
THING IS ACCOMPLISHED BY THE LAW
WE ALREADY HAVE THAT REQUIRES
THAT, THAT WE PROVE, THAT THE
STATE PROVE, ESTABLISH, THAT
VIOLATIONS ARE WILLFUL IN ORDER
FOR THERE TO BE A VIOLATION.
WHY AM I WRONG?
>> YES, YOUR HONOR.
THE CONDITION THAT I WOULD PUT,
THE LANGUAGE BY THE FIFTH OUT OF
THEIR OPINION SAYS, YOU WILL
ABSTAIN ENTIRELY FROM
ASSOCIATING WITH PERSONS ENGAGED
IN ILLEGAL DRUG USE.
I THINK USE IS A BROAD TERM.
IT CAN CERTAINLY MEAN, IF I WERE
RIGHT HERE IN THE SAME ROOM WITH
YOU, BUT IT CAN ALSO MEAN AS
POINTED OUT--
>> YOU ALREADY CONCEDED THE
INSERTION OF WILLFULLY--
>> WAS INCORRECT ANSWER, YOUR
HONOR.

>> YOU TAKE THAT BACK?
>> YES I DO.
HERE IS MY CONDITION.
>> YOU'RE ENTITLED TO TAKE IT
BACK.
>> YES, NO.
>> BUT HERE'S MY QUESTION, THIS
IS--
>> SORRY, YOUR HONOR.
>> DID HE VIOLATE, IS HE IN
PRISON?
>> HE IS IN PRISON RIGHT NOW.
>> SO TO TALK ABOUT, NOT THAT IT
IS THEORETICAL, IT IS LIKE
SOMETHING HOPEFULLY-- IS HE
ALSO SUPPOSED TO WHEN HE GETS
OUT ABSTAIN FROM THE USE OF
ALCOHOL OR JUST ILLEGAL DRUGS?
>> JUST ILLEGAL DRUGS.
THE STRUCK ON A B-2 MOTION THE
ALCOHOL CONDITION NOT RELEVANT
TO HIS OFFENSE.
>> WHAT WAS HIS OFFENSE?
>> IT WAS CHILD ABUSE.
>> HE WAS USING DRUGS.
>> IT WAS DISPUTED WHAT TYPE,
BUT THE CHILDREN, THE BABY'S
MOTHER THAT HE WAS WATCHING,
THEY WERE OUT.
TWO OLDER GIRLS WERE WATCHING
THE 7-YEAR-OLD BOY, 12, NINE AND
SEVEN.
HE FELL ON A BED, HIT IS HAD HE
HAD SOMEHOW.
WAS UNSURE HOW IT HAPPENED.
HE CAME BACK, HE SPANKED THE
GIRLS, TWO COUNTS OF CHILD
ABUSE.
THEN THE STATE ASSERTS HE
INJECTED 7-YEAR-OLD WITH
OXYCODONE.
HE ASSERTED HE GAVE HIM A PILL,
LORTAB, SOMETHING WITH CODEINE
IN IT, PAIN HE WAS SUFFERING.
>> GETS OUT-- WHAT IS HIS
PRISON SENTENCE?
>> 12 YEARS.
>> HE IS HOW LONG INTO IT?
>> A LITTLE OVER A
YEAR-AND-A-HALF.

THIS IS 2014.

>> NOW, I MEAN, AGAIN, OBVIOUSLY WE TOOK THIS CASE BUT IF, WHEN HE GETS OUT, HE GOES TO A NA MEETING, NARCOTICS ANONYMOUS, PEOPLE THERE HAVE USED DRUGS, ARE YOU THINKING THAT THE WAY THIS IS WORDED THAT IT WOULD MEAN THAT HE CAN'T BE ANY PLACE WHERE SOMEBODY IS, HAD USED DRUGS IN THE PAST?

>> NO, YOUR HONOR.

>> SO YOU'RE NOT EVEN SAYING, SO AGAIN--

>> THESE WERE SOME OF HIS CONDITIONS HE HAS TO DO TO ATTEND THOSE MEETINGS.

>> HE CAN'T, GOES IN, GOES WITH A ROOMMATE.

THE ROOMMATE IS A DRUG ADDICT AND HE KNOWS IT.

HE CAN'T DO THAT?

>> CORRECT.

>> SO IT SOUNDS LIKE WE AGREE ON WHAT THIS CONDITION MEANS.

IF WE AGREE ON IT, HOW CAN IT BE VAGUE?

I GUESS THAT IS ANOTHER WAY OF GETTING TO, WHAT'S VAGUE ABOUT IT?

>> WELL, I THINK THE LACK OF KNOWLEDGE, WHICH I KNOW THE STATE SAYS--

>> JUSTICE CANADY SAID, YOU DON'T HAVE TO CONCEDE, IT HAS TO BE WILLFUL AND SUBSTANTIAL TO BE VIOLATION OF PROBATION.

>> WE'RE HERE, IT IS DUE PROCESS ISSUE YOU'RE ENTITLED TO NOTICE AND HEARING.

HERE I DON'T THINK IT SUFFICIENTLY CLEAR IN TERMS OF THE CONDITION OF, FOR HIM TO KNOW WHAT HE IS SUPPOSED TO DO.

>> WHAT ARE YOU WORRIED ABOUT? JUST HELP US.

>> WOULD BE EXAMPLE OF ANY CASE HE IS ALLOWED TO GO TO A RESTAURANT BAR.

HE GOES TO A, HERE IS MY

EXAMPLE.

HE WOULD GO TO A FRIEND'S, WE'RE MEETINGS FOR LUNCH WHEN HE GETS OUT.

HE GOES, I'M MEETING JOE.

JOE COMES ALONG, I'M HERE.

I'M BRINGING MY FRIEND WES.

THEY JAYWALK.

OFFICER SAYS, YOU DON'T MIND I CONSENT TO SEARCH?

THE FRIEND BROUGHT ALONG OR FRIEND UNKNOWN TO MR. DEMOTT, HAS A JOINT IN HIS POCKET.

I LIT UP AN HOUR AGO.

>> WHY DO JUSTICE CANADY'S QUESTION TO YOU, TO VIOLATE PROBATION HAS TO BE WILLFUL IF HE DIDN'T KNOW THE GUY HAD A JOINT IN HIS POCKET, HOW COULD THE STATE PROVE IT WAS WILLFUL?

>> I'M NOT SAYING THEY WOULD. HE WOULD BE DEPRIVED LIFE, LIBERTY DURING PROCESS OF THAT PROBATION, BEING DETERMINED, TAKEN IN, BEING ARRESTED, HELD WITHOUT BOND POSSIBILITY.

I KNOW THIS MIGHT BE--

>> PROBATION OFFICERS WHO ARE ENFORCING THIS KNOW THAT THEY HAVE TO SHOW IT IS WILLFUL. IT IS ALWAYS POSSIBLE THAT SOMEBODY'S GOING TO BE PINCHED BY A PROBATION OFFICER WRONGFULLY.

THAT CAN HAPPEN.

THIS IS, THIS FRAMEWORK OF, THAT, OF, HAVING TO SHOW A WILLFUL VIOLATION IS SOMETHING THAT IS WELL-ESTABLISHED AND EVERYBODY UNDERSTANDS IT.

ISN'T THAT CORRECT?

>> THAT IS-- WHAT I WOULD STATE IS THAT A PROBATIONER IS ENTITLED, FOR A CONDITION OF PROBATION AND I'M NOT TRYING TO DODGE YOUR QUESTION, YOUR HONOR, A CONDITION MUCH PROBATION MUST BE CLEAR.

>> YOU WOULDN'T BE THE FIRST ONE THAT DIDN'T DODGE.

>> IT IS CLEAR AND NOT AMBIGUOUS
OR SUBJECT TO DIFFERENT
REASONABLE INTERPRETATIONS IN
ORDER FOR A VIOLATION OF THE
CONDITION TO FORM A BASIS FOR A
REVOCAION OF PROBATION.

I JUST, I THINK IT WOULD LEAD TO
AN AD HOC SUBJECT BASIS.

>> THIS CASE OUT OF CALIFORNIA
WAS CITED, THIS PEOPLE VERSUS
LOPEZ, WHICH HAD A SIMILAR
CONDITION INVOLVING GANG.
BASICALLY SAID THAT, PROHIBITED
ASSOCIATION WITH GANG MEMBERS.
AND THE CALIFORNIA SUPREME COURT
BASICALLY SAID THAT WHILE A
CONDITION MUST BE SUFFICIENTLY
PRECISE FOR PROBATIONER TO KNOW
WHAT IS REQUIRED OF HIM, ONLY
REASONABLE SPECIFICITY IS
REQUIRED.

I MEAN I'M TRYING TO FIGURE OUT
WHAT REASONABLE SPECIFICITY,
WANT MORE DO YOU WANT HERE THAN
WHAT'S ON THERE?

WHAT ELSE DO WE NEED TO SAY?

>> I WOULD, CAN I OFFER WHAT
WOULD BE MY PROPOSED--

>> SURE.

>> TO NOT USE ILLEGAL DRUGS AND
NOT KNOWINGLY ASSOCIATE WITH
ANYBODY WHO IS ENGAGED IN
ILLEGALLY USING DRUG.

>> YOU PUT IN THE WORD
KNOWINGLY?

>> YES, I WOULD, YOUR HONOR.
I THINK THAT WOULD-- I, TO BE
HONEST THIS WAS SENT DOWN ON B-2
TWICE.

HE WAS TAKEN OFFER DRUG OFFENDER
PROBATION AND SPECIAL
CONDITIONS.

THEN THE COURT GRANTED THE
SECOND B-2 STRIKING THE ALCOHOL
CONDITIONS.

HE FULLY GRANTED THE B-2 LEFT
THIS CONDITION IN.

I'M NOT SURE IF IT WAS OVERSIGHT
BY THE COURT OR IF SOME
CLARIFICATION-- I JUST, YOUR

HONOR, WHAT I WORRY ABOUT ON THIS IS, THIS IS A SPECIAL CONDITION.

THE SAME CASE CITED BY THE FIFTH, THOSE CONDITIONS ABOUT DON'T VISIT THE PLACES WHERE UNLAWFUL ACTIVITY IS GOING ON, THOSE, THEY SAID, THE, LET ME HAVE IT, THE JAWORSKI CASE. THAT WAS JUST FOR THE POINT OF SAYING, IF IT'S A SPECIAL CONDITION AND FALLS UNDER THE SAME TERM AS THE GENERAL CONDITION, NOT ASSOCIATE WITH THOSE ENGAGED IN ILLEGAL ACTIVITY, YOU DON'T NEED TO PRONOUNCE IT.

SO NOW WE RUN THE RISK OF POTENTIALLY HAVING A LOT OF CONDITIONS OUT THERE WITH THE FIFTH'S INTERPRETATION THAT YOU ABSTAIN ENTIRELY FROM ASSOCIATING WITH ANYBODY WHO'S ILLEGALLY USING DRUGS.

>> YOU SAY YOU DON'T EVEN NEED THIS CONDITION BECAUSE IF YOU'RE WITH PEOPLE THAT ARE ENGAGED IN USING ILLEGAL DRUGS, YOU'RE VIOLATING THE GENERAL CONDITION?

>> WELL, I SAY, NO, WHAT I'M SAYING IS, THAT WE RUN THE RISK, IF THE FIFTH'S POSITION ON THIS WERE TO HOLD UP, THAT IT, THAT THAT WOULD JUST BE ALLOWED WITHOUT ANY WARNING NOTICE TO A PROBATIONER, OR TO A PERSON BEING PLACED ON PROBATION.

I--

>> DO YOU KNOW OF ANY CASES WHERE SOMEONE HAS BEEN VIOLATED FOR BEING IN THE PRESENCE OF SOMEONE WHO HAD IN THE PAST USED ILLEGAL DRUGS?

DO YOU KNOW OF ANY CASE THAT HAS OCCURRED IN THE APPELLATE COURTS?

>> NO, I DON'T BUT I CERTAINLY HAVE HAD CASES THROUGH OUR OFFICE, AS JUSTICE CANADY POINTED OUT, PROBATION OFFICER

OFFERED IT ON VERY SKIMPY STUFF.
I WOULD WORRY-- YES I HAD A
JOINT I LIT UP AN HOUR AGO.

>> HOW MUCH PROBATION DOES HE
HAVE?

>> FIVE YEARS.

>> SO IF HE WERE TO VIOLATE HE
COULD GO BACK FOR ANOTHER FIVE
YEARS?

NOT JUST LIKE--

>> FIRST-DEGREE FELONY.
SO PUNISHABLE POTENTIALLY ABOUT
30 YEARS.

>> HE IS ON SEX OFFENDER
PROBATION?

>> NO, YOUR HONOR.

THIS IS THE ONLY PIECE.

>> THE CONCERN I HAVE AGAIN, AS
FAR AS PROBATION OFFICER IS
CONCERNED THERE ARE SOME
CHARGES, THERE ARE SOME PEOPLE
WHO ARE PLACED ON PROBATION FOR
WHATEVER REASON MAY BE, MAYBE
THEY DON'T WANT THE CHILD TO
TESTIFY, WHATEVER REASON,
PROBATION OFFICERS DON'T FEEL
LIKE THIS PERSON SHOULD BE ON
PROBATION.

THEY WILL START LOOKING FOR
REASONS THAT THIS GUY WILL GET
SPECIAL STRICT SCRUTINY SO TO
SPEAK.

BUT MY CONCERN IS, IS A
SITUATION WHERE SOMEONE GETS IN
A CAR FOR EXAMPLE, AND GETS A
RIDE HOME FROM WORK BY AN
EMPLOYEE AND THERE ARE TWO OR
THREE PEOPLE IN THE CAR.
CAR GETS PULLED OVER AND
SOMEBODY WAS, YOU KNOW, WAS
CARRYING ILLEGAL DRUGS,
OXYCODONE OR COCAINE OR WHATEVER
ELSE, AND ALL OF A SUDDEN THERE
HE IS OFF TO THE RACES.

SO I THINK THE WORD KNOWING,
WHAT IS PERSONAL PROBATION?
PERSONAL PROBATION IS HE OR SHE
SUPPOSED TO TELL BEFORE THEY GO
ANYWHERE?

SAY, LISTEN IF ANYBODY HAS DRUGS

HERE, I'M ON PROBATION, I CAN'T BE HERE.

PLEASE TELL ME.

IS THAT WHAT IS REQUIRED?

SO I DON'T KNOW, THIS IS DIFFICULT THING I THINK.

>> WELL AND I--

>> I THINK THIS, IT SAYS USING ILLEGAL DRUGS.

SO, WOULDN'T BE IN THEIR POCKET WOULDN'T NECESSARILY BE USING.

>> NO, IT WOULD NOT.

>> NOW, THE GENERAL CONDITIONS, STANDARD CONDITIONS SAYS YOU CAN'T ASSOCIATE WITH ANYBODY ENGAGED IN ANY CRIMINAL ACTIVITY.

>> YES.

>> USING AN ILLEGAL DRUG WOULD BE A CRIMINAL ACTIVITY, WOULDN'T IT?

>> CERTAINLY.

>> OR SOMEBODY LIGHTS UP IN, STILL THERE.

>> YOU HAVE TO LEAVE.

>> WE'VE HAD CASES THROUGH OUR OFFICE THAT HAS BEEN, YOU KNOW, A PCA VIOLATION OF, YOU KNOW, OF PEOPLE JUST, I'M NOT TRYING TO DISPARAGE ANY COURT BUT THOSE TYPE OF AN INCIDENT COULD OR HAS HAPPENED.

BUT I WOULD HOPE THAT THE PROBATION OFFICER WOULD BE REASONABLE.

IT'S A STRANGE CONDITION BECAUSE I COULD BE, IF SOMEBODY, I WAS WITH AT A BAR, I'M DRINKING, WENT OUTSIDE, SMOKED, SMOKED THEIR WHOLE JOINT, WHATEVER, THEY COME BACK, THEY'RE NOT IN POSSESSION OF ANY DRUGS NOW. SO THEY'RE NOT ENGAGED IN A CRIMINAL ACTIVITY.

>> DID YOU GO OUTSIDE WITH THEM.

>> NO.

>> SO THEREFORE YOU WOULDN'T, YOU WOULDN'T EVEN SEE IT.

>> RIGHT.

BUT, I'M NOW ASSOCIATING WITH

THAT PERSON AND THERE IS NO
DISTINGUISHING POINT OF A TIME
PARAMETER BETWEEN THAT
ASSOCIATION AND THE USING OF
ILLEGAL DRUGS.
IN THAT CONDITION.

>> I GUESS IT WOULD HAVE TO BE
YOU'RE ASSOCIATING WITH A PERSON
WITH A PERSON WHILE HE IS STILL
HIGH, UNDER THE INFLUENCE OF THE
DRUGS HE JUST USED.

>> I MEAN I'M NOT ENCOURAGING
PROBATIONERS TO BE AROUND, YOU
KNOW, SUCH THINGS OR BE IN THEIR
PRESENCE BUT I THINK THERE COULD
BE SUCH SITUATIONS IS WHAT YOU
ALLUDED TO EARLIER, YOUR HONOR.

>> I DON'T, CAN I, JUST A
QUESTION HOW YOU MAKE SURE
SOMEBODY STAYS ON THE
STRAIGHT-AND-NARROW.

YOU SAID THE JUDGE STRUCK THE
USE ABOUT ALCOHOL.

NOW WHATEVER THIS DEFENDANT DID
HE COULD HAVE BEEN, HIGH ON
DRUGS OR HE COULD HAVE BEEN
USING ALCOHOL AND DID SOME
TERRIBLE THINGS.

>> NO EVIDENCE OF ALCOHOL IS WHY
I THINK HE STRUCK IT.

>> BUT THE DRUG WAS THAT HE
INJECTED AN OXY-- OXYCONTIN?

>> OXYCODONE.

AND HE TESTIFIED IN THE SENTENCE
HEARING THAT HE WASN'T IN HIS
RIGHT MIND, MR. DEMOTT DID.

SO, I MEAN, THERE IS NO MORE
FURTHER EVIDENCE.

I SEE I'M INTO MY REBUTTAL TIME
AND I'LL COME BACK.

>> OKAY.

>> I WILL FINISH, THANK YOU.

>> MAY IT PLEASE THE COURT.

I'M WESLEY HEIT.

I REPRESENT THE STATE IN THIS
CASE.

WHEN YOU LOOK AT THE CONDITION
THAT IS BEING CONTESTED.

THIS AROSE BECAUSE OF CONFLICT
BETWEEN THE SECOND DISTRICT

COURT OF APPEAL AND THE FIFTH
DISTRICT COURT OF APPEAL BUT
WHEN YOU LOOK AT THE SPECIFIC
STANDARD CONDITION, YOU WILL NOT
ASSOCIATE WITH PERSONS ENGAGED
IN CRIMINAL ACTIVITIES.

YOU WILL NOT ASSOCIATE WITH
SOMEONE INVOLVED IN CRIMINAL
ACTIVITIES AND THEN YOU LOOK
SPECIFICALLY AT THE SPECIAL
CONDITION, YOU WILL ABSTAIN
ENTIRELY FROM THE USE OF ILLEGAL
DRUGS.

THAT SPEAKS FOR ITSELF.

YOU WILL NOT ASSOCIATE WITH
ANYONE WHO IS ILLEGALLY USING
DRUGS.

AND, PETITIONER MAKES AN
ARGUMENT THAT, YOU KNOW, WE'RE A
LITTLE BIT CONFUSED ABOUT WHAT
THE MEANING OF IS IS.

BUT, WHEN YOU LOOK IS USING.
WE ARE USING DRUGS.

THIS IS NOT, WE HAD BEEN USING,
WE PREVIOUSLY HAD USED.

WE WILL BE USING.

VERB MEANS-- PRESENT TENSE
VERB.

THE DEFENDANT--

>> SO IF THAT IS THE CASE.

WHAT DO YOU NEED THE SPECIAL--
YOU NEED THE SPECIAL CONDITION
FOR, YOU SHALL NOT USE DRUGS
ALTHOUGH THAT IS AN ILLEGAL
ACTIVITY.

SO I'M NOT SURE, WHY DO YOU NEED
THE SPECIAL CONDITION?

IF IT IS NOT GOING TO ADD TO--
GIVE MEET FIRST ONE YOU SAID IS
ENTIRE--

>> GENERAL, NOT ASSOCIATE WITH
PERSONS ENGAGED IN CRIMINAL
ACTIVITIES.

>> SO IF SOMEBODY IS SMOKING A
JOINT, ARE THEY ENGAGED IN
ILLEGAL ACTIVITY?

>> YES.

>> OKAY.

SO WHAT DOES THAT, STATE
THE STATE RIGHT NOW--

>> THAT'S WHY I HESITATED BUT
DEPENDS ON, CORRECT.
>> SHOOTING UP HEROIN.
>> WHAT DOES THAT CONDITION THEN
ADD?
THAT'S MAYBE WHAT THE CONCERN
IS.
WHAT DOES THAT CONDITION ADD
THAT ISN'T COVERED BY THE
GENERAL CONDITION IF NOT SOME
FURTHER REQUIREMENT THAT YOU'VE
GOT TO DO A SCREENING OF
EVERYBODY THAT YOU'RE
ASSOCIATING WITH TO SEE WHETHER
THEY'VE, YOU KNOW, USED DRUGS
AND THEY'RE STILL HIGH, FOR
EXAMPLE?
>> STATE WOULD SUBMIT IT'S
ADDING SPECIFICITY AND THE
ATTACK ON THE SECOND, THE
CHALLENGE OUT OF THE SECOND
DISTRICT, WAS THAT IT'S VAGUE.
YOU'RE NOW SAYING IT'S ALMOST
TOO SPECIFIC.
>> WELL, HERE'S THE PROBLEM.
IF YOU INTERPRET IT THE WAY THE
STATE IS SAYING --
>> THE WAY IT'S WRITTEN, YES.
>> WELL, AGAIN, I GUESS IT'S --
HE -- THIS DEFENSE LAWYER, WHO
SAYS HE SEES THESE CASES AND
SEES -- THOUGH WE THINK
PROBATION OFFICERS ARE ALWAYS
GOING TO ACT TO GIVE THE
PROBATIONER THE BENEFIT OF THE
DOUBT, MY EXPERIENCE ON THE
APPELLATE COURT WAS THAT WASN'T
ALWAYS THE CASE.
THERE WERE PEOPLE THAT DUMPED
THEIR LOAD.
THEY WANTED IT EASIER.
THEY WANTED TO REVOKE.
SO WE GOT TO MAKE SURE IF YOU'RE
SAYING IT'S SPECIFIC TO BE NO
MORE THAN THE GENERAL, THEN IT'S
REDUNDANT.
IF IT'S GREATER, THEN IT MAY BE
VAGUE.
>> THIS WAS ORIGINALLY PART OF
THE SPECIAL DRUG OFFENDER

PROBATION WHEN HE HAD MOVED TO CORRECT IT, BECAUSE WE WERE DEALING WITH OXYCODONE, AND HE ADMITTED UNDER THE INFLUENCE OR NOT IN HIS RIGHT MIND. THIS IS A CONDITION THAT IS PART OF THE STANDARD DRUG OFFENDER. IT'S MORE SPECIFICITY, DIRECTING HIM WITH MORE CLARITY. IT'S INTERESTING. WHEN YOU LOOK AT THE SECOND DISTRICT COURT OF APPEAL, THE HUFF CASE SAID WE CAN'T BAN YOU FROM LIVING WITHIN THREE BLOCKS OF A HIGH DRUG AREA. AND THAT WAS FOUND VAGUE. THEN WHEN THE SECOND FOUND THIS SPECIFIC CONDITION THAT'S BEING CONTESTED HERE, IT SAID, JUST LIKE IN HUFF, THIS IS VAGUE. WELL, THIS IS NOTHING LIKE HUFF. WHEN YOU LOOK AT HUFF, HIGH DRUG AREA. THEY EVEN SAID IN HUFF THAT WOULD BE FINE IF YOU ACTUALLY SPECIFICALLY TOLD HIM WHAT A HIGH DRUG AREA IS. AND THEN THE SECOND DCA HAD CITED A CASE THAT SAID YOU CAN'T LIVE IN CENTRAL FLORIDA, WITH NO DEFINITION OF WHAT CENTRAL FLORIDA IS. SO, YES, YOU CAN HAVE A CONDITION THAT IS VAGUE. THAT'S WHY YOU WOULD CONTEST THIS FROM A DUE PROCESS STANDPOINT ON THE FRONT END. >> LET ME ASK YOU ABOUT A PROCEDURAL ASPECT OF THIS CASE. HE PLED GUILTY, WENT TO PRISON, CAME BACK, STARTED HIS PROBATION. DID HE ACTUALLY VIOLATE PROBATION OR DID HE JUST COME IN FOR THE COURT TO -- >> HE HAS A 12-YEAR PROBATION. THIS IS -- EXCUSE ME, A 12-YEAR PRISON SENTENCE. THIS IS A DIRECT APPEAL. HE HAS ANOTHER 11 YEARS IN

PRISON BEFORE STARTING HIS FIVE YEARS OF PROBATION.

THIS IS A CHALLENGE SAYING THEY HAVE A CHALLENGE ISSUE, A DUE PROCESS ISSUE, WITH THE CONDITION.

>> I JUST WANT TO MAKE SURE WHEN HE GETS OUT WHILE HE'S ON PROBATION THAT HE'S NOT VIOLATING.

>> THEY'RE CITING CASES OUT OF THE SECOND THAT HOLD THIS, THAT SAID THIS IS UNCONSTITUTIONALLY VAGUE.

>> THE CONDITION OF KNOWING, WHICH IS THE STATE OKAY WITH SAYING THAT THAT IS IMPLICIT IN THE CONDITION?

SO IT SOUNDS LIKE IF WE HAD MEDIATION, THE TWO OF YOU COULD AGREE THAT THAT'S WHAT THE --

>> EXCEPT I BELIEVE IT'S INHERENT IN ANY PROBATION. YOU WILL NOT POSSESS A FIREARM. WE DON'T WRITE THE WORD KNOWINGLY POSSESS.

>> BUT THAT IS DIFFERENT. YOU KNOW IF YOU POSSESSED IT. YOU CAN'T BE IN THE SAME CAR WITH ANYONE WHO POSSESSES A FIREARM.

IT HAS TO BE KNOWING, RIGHT?

SO IT'S DIFFERENT.

YOU KNOW IF YOU'RE USING ILLEGAL DRUGS VERSUS --

>> THERE'S MORE SPECIFICITY HERE.

>> -- THAN IF YOU POSSESS A FIREARM.

THE ISSUE IS DO YOU KNOW WHAT OTHER PEOPLE ARE DOING.

>> THE NEW STATUTES PROHIBIT CERTAIN FELONS FROM BEING WITHIN SO MANY FEET OF A SCHOOL, A CHURCH AND SO ON.

YOU HAVE TO KNOW THAT AROUND THE BLOCK THERE IS A SCHOOL.

YOU HAVEN'T TURNED THE BLOCK YET AND KNEW ABOUT IT.

YOU CAN'T --

>> BUT MY GREATER POINT WAS IF YOU LOOK AT ALL THE CONDITIONS OF PROBATION, NONE OF THEM HAVE THE WORD "KNOWINGLY POSSESS A FIREARM."

NO.

YOU'RE PROHIBITED FROM POSSESSING A FIREARM.

IT'S INHERENT IN THE NATURE OF IT HAS TO BE WILLFUL.

WHEN YOU LOOK AT LAWSON, WE DIDN'T SAY WITH SPECIFICITY HOW LONG YOU HAVE TO DO YOUR DRUG OFFENDER, SEX OFFENDER COUNSELING.

WE SAID YOU SHALL COMPLETE THIS AND HE MISSED HIS FIRST TEN TIMES.

THIS COURT WROTE IT'S COMMON SENSE AND THE TRIAL COURT, THIS IS A MATTER OF GRACE.

WE DON'T HAVE TO PUT THAT DOWN. OF COURSE IT HAS TO BE WILLFUL, KNOWING AND SUBSTANTIAL.

BUT EVERY CONDITION DOESN'T LIST THE WORD "KNOWING."

>> ISN'T IT BETTER TO HAVE IT BECAUSE WE'RE DEALING WITH NOT ONLY THE PROBATIONER, IF IT GETS TO THE TRIAL COURT, THE TRIAL COURT KNOWS, MAYBE.

WE WANT IT TO BE SO THE PROBATIONER AND THE PROBATION OFFICER ARE CLEAR AS TO WHAT IT MEANS SO WHEN IT'S BEING DESCRIBED WHEN HE GETS OUT OF PRISON, THIS IS WHAT YOU SHALL NOT DO, WE WANT THE CLARITY TO SAY, NO, YOU CAN GO TO AN NA MEETING.

YOU CAN GO TO A BAR, ALTHOUGH, AGAIN, I'D LIKE -- ALCOHOL AND DRUGS CAN HAVE THE SAME EFFECT ON SOMEBODY.

BUT YOU CAN'T KNOWINGLY BE WITH SOMEONE WHO IS USING AT THE TIME.

>> WELL, AGAIN, IF YOU READ IT AS IT'S WRITTEN, YOU ABSTAIN ENTIRELY FROM THE USE OF ILLEGAL

DRUGS.

>> WELL, THAT YOU KNOW.

>> BUT THE PETITIONER SUBMITS THAT SOMEBODY MAY SLIP SOMETHING IN THEIR DRINK.

THAT THEY'RE CONTESTING TO BE UNKNOWING.

YET THE PETITIONER IS SUBMITTING IN THEIR BRIEF THAT THIS COULD BE UNKNOWING.

THEY WILL NOT ASSOCIATE WITH SOMEONE WHO IS USING DRUGS.

YOU HAVE TO BE IN THE PRESENCE OF SOMEONE WHO'S ILLEGALLY USING DRUGS.

AND IT'S INHERENT IN THE TOPIC THAT YOU WOULD KNOW-- IN THE CONDITION ITSELF THAT YOU WOULD KNOW TO BE WILLFUL.

AND TO HAVE A PREEMPTIVE -- THIS IS ALMOST A FACIAL ATTACK OF LIKE A FREEDOM OF ASSOCIATION TYPE THING.

I CITED SOME CASES ABOUT THAT.

YOU DON'T HAVE THE ENTIRE SPECTRUM OF RIGHTS WHEN YOU'RE ON PROBATION.

THE FACT THAT WE CAN HAVE A CHILLING EFFECT UPON WHO YOU ASSOCIATE WITH, SOMEONE WHO IS ILLEGALLY USING DRUGS IN THE PRESENT TENSE, TO ME WOULD BE COMMON SENSE.

WHEN YOU LOOK AT LAWSON, THIS COURT WROTE WE DON'T TRY TO COME UP WITH SCENARIOS WHERE THE DEFENDANT COULD SQUEEZE THROUGH THE CRACK AND SAY I GOT YOU.

WE LOOK AT THE COMMON SENSE INTERPRETATION OF THE WAY THE LANGUAGE IS WRITTEN AND APPLY IT THAT WAY.

THE FIFTH DISTRICT COURT OF APPEAL ORDERED IT WELL.

CONDITIONS OF PROBATION SHOULD BE WRITTEN AND READ WITH A MEASURE OF COMMON SENSE SO THAT THE FAIR NOTICE REQUIREMENT DOES NOT PROVIDE REFUGE FOR DEFENDANTS TO DELIBERATELY TURN

A BLIND EYE TO OR ILLEGALLY
PROFESS IGNORANCE OF THE OBVIOUS
CONSEQUENCES OF THEIR ACTIONS.
THE LAWSON CASE WAS UPHELD BY
THIS COURT.

BUT YOU'LL ABSTAIN ENTIRELY FROM
THE USE OF ILLEGAL DRUGS AND NOT
ASSOCIATE WITH SOMEONE WHO IS.
ASSOCIATING WITH PEOPLE INVOLVED
IN CRIMINAL ACTIVITY, IT'S
CRIMINAL TO HAVE TAX FRAUD.
YES, WE HAVE A PROOF PROBLEM
WITH CRIMINAL ACTIVITY.
IT'S IN THE FEDERAL COURT
SYSTEM, ALL THE STATE COURT
SYSTEMS.

THIS IS JUST A MORE SPECIFIC
RENDERING, A DRUG RENDERING, OF
THAT CONDITION.

>> WHY ISN'T HE ON DRUG OFFENDER
PROBATION?

>> BECAUSE IT WAS AN AGGRAVATED
CHILD BATTERY, SO THE JUDGE HAD
INITIALLY PLACED THAT UPON HIM.
THEY THOUGHT IT WOULD BE, TOO,
SAYING WE WANT TO CORRECT THE
SPECIAL -- THE ENTIRETY OF THE
DRUG OFFENDER, SO THE COURT
UPHELD SOME OF THE CONDITIONS HE
HE HAD IMPOSED AND IMPOSED
SPECIAL CONDITIONS AND UPHELD
THOSE AND STRUCK THE ONES LIKE
ALCOHOL.

>> WELL, THAT'S TOO BAD, I
THINK, FOR YOUR CLIENT.

>> HE'S SERVING A 12-YEAR
SENTENCE.

IT'S THE DIFFERENCE BETWEEN THE
PREEMPTIVE NATURE OF I DON'T
HAVE DUE PROCESS AND CAN THE
STATE PROVE A WILLFUL VIOLATION.
ANY CONDITION IS SUBJECT TO A
POLICE OFFICER, A PROBATION
OFFICER OR SOME OF THE CONCERNS
THAT THE COURT HAS RAISED.
BUT THOSE ARE QUESTIONS OF WHAT
THE STATE CAN PROVE IN A
VIOLATION HEARING OR, YOU KNOW,
YOU'RE IMPUGNING ONTO THE SYSTEM
THE FACT THAT THEY POTENTIALLY,

YOU KNOW, MAY ABUSE THE SYSTEM
IN THAT REGARD.
BUT AS FAR AS NOTICE AND
VAGUENESS, THE STATE WOULD
SUBMIT IT'S SIMPLY NOT THERE.
AND IF THERE'S NO FURTHER
QUESTIONS, WE ASK THAT YOU
AFFIRM THE FIFTH DISTRICT COURT
OF APPEAL, WHICH WOULD OVERTURN
THE LINE OF CASES OUT OF THE
SECOND DISTRICT COURT OF APPEAL.
>> JUST VERY BRIEFLY, YOUR
HONORS, THE RESPONDENT CITED TO
SOME CASES ABOUT CARRYING A
CONVICTED FIREARM, THAT
KNOWLEDGE CAN BE READ INTO THESE
STATUTES, AND I DON'T THINK WHEN
YOU HAVE LANGUAGE OF ABSTAIN
ENTIRELY FROM ASSOCIATING WITH
THESE PEOPLE YOU WANT TO LEAVE
IT OPEN TO THE PROBATION
OFFICERS IN DELEGATING SUCH
AUTHORITY TO THEM TO DO THAT.
THE KNOWLEDGE ELEMENT IS IN THAT
SPECIAL CONDITION TO NOT VISIT
PLACES WHERE UNLAWFUL AND TOXIC
AND ILLEGAL DRUGS ARE USED,
SOLD, DISPENSED.
SIMILARLY, 948.33 THAT PROHIBITS
GANG ASSOCIATIONS INCLUDES THE
WORD "KNOWLEDGE."
IN ADDITION, WE WOULD ASK IF THE
COURT INCLUDES THE WORD
"KNOWLEDGE," ALSO TAKE THE WORD
"ENGAGED."
I REALIZE IS IS A PRESENT TENSE
FORM, BUT A FOOTBALL PLAYER ON
PROBATION, IS HE USING?
YES, HE'S USING.
IT'S A VERY COMMON, BROAD TERM.
AND I THANK YOU FOR YOUR TIME.
WE'D ASK YOU TO UPHOLD THE
SECOND DISTRICT COURTS OR OFFER
CLARIFICATION FOR THE LOWER
COURT.
THANK YOU.
>> THANK YOU FOR YOUR ARGUMENTS.
COURT IS IN RECESS UNTIL
TOMORROW AT 9:00.
>> ALL RISE.

