



Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

AUGUST TERM, 2026

State of Vermont v. Harry Williams*	}	APPEALED FROM:
	}	Superior Court, Caledonia Unit,
	}	Criminal Division
	}	CASE NO. 533-9-17 Cacr
	}	Trial Judge: Michael R. Kainen

In the above-entitled cause, the Clerk will enter:

Defendant appeals from a criminal division order concluding that he violated a condition of his probation prohibiting unapproved contact with females under the age of sixteen. We affirm.

I. Background

In 2019, pursuant to an agreement with the State, defendant pleaded guilty to charges of sexual assault of a minor, human trafficking, and resisting arrest. The criminal division imposed a sentence of fifteen-to-thirty years, all suspended but eight years, with probation. Defendant's probation conditions included, as relevant here, condition 38: "You may not initiate or maintain contact with females under the age of 16, unless otherwise approved in advance and in writing by your Probation Officer or designee. Said contact may require being accompanied by a responsible adult, approved by your Probation Officer or Designee."

In July 2025, defendant was released on probation after serving the unsuspended portion of his sentence. Later the same month, defendant's probation officer filed a complaint alleging that defendant violated condition 38 by staying at an apartment occupied by a woman, T.G., and her six-year-old daughter, L.G.¹ Defendant was arrested and returned to the custody of the Department of Corrections (DOC).

¹ The complaint also alleged that defendant violated condition 40—which required that he inform all persons with whom he had "a significant relationship or close affiliation" of his "sex offending history"—based on the same set of circumstances. Following the merits hearing, the court concluded that the State failed to prove that defendant violated condition 40.

The criminal division held a violation-of-probation merits hearing over two days in August 2025. It heard testimony from defendant's probation officer; T.G.; T.G.'s step-grandfather; the apartment property manager; and defendant. It also admitted several exhibits, including photographs of L.G.'s bedroom, the written rental agreement between defendant and T.G., and footage from the apartment building's security cameras. Based on the evidence presented, the court found the following on the record and in its subsequent written order.

When defendant was released, his probation officer reviewed his probation conditions with him, using a methodology appropriate to inform defendant of each condition he was required to abide by. At the time of his release, defendant did not have a permanent residence, but he had been staying at someone's house. By chance, he encountered T.G., whom he had known prior to his incarceration. Defendant and T.G. met at T.G.'s residence, where they signed a short-term rental agreement contemplating that defendant would stay at T.G.'s apartment for a fourteen-day period. Defendant knew that T.G. had a six-year-old daughter. Defendant and T.G. understood that defendant would sleep in L.G.'s room, and that while he was there, L.G. would stay in T.G.'s room. Security footage showed defendant in the common room, following T.G. and L.G. up the stairs, and in the hall outside the door of the apartment. Defendant was in the residence with L.G. He spent at least one night at the apartment, staying in L.G.'s room.

Defendant informed his probation officer of this contemplated living arrangement, but the probation officer never reviewed or approved it. Defendant did not have the probation officer's advance permission to be in contact with L.G. The contact between L.G. and defendant in the apartment building was not incidental, but instead "an intentional contact where [defendant] was in proximity with the child."

The court then considered the appropriate sanction. It noted that defendant had a prior probation violation, followed by a "close call" in which the court found that the State had not proved a second alleged violation, but after which defendant must have been on notice that "he was on really thin ice." In connection with the instant violation, the court explained that it was "not unsympathetic with the fact that [defendant] was desperately looking for a place to stay." It recognized the difficulties inherent in securing housing as an unemployed sex-offender who had just been released from prison and, based on these considerations, chose not to revoke defendant's probation. The court explained that this was nonetheless "really a huge mistake," and that while he could see why the living situation "was tempting," defendant should have understood that "any contact with somebody under sixteen [was] going to set [him] up for a problem." It modified the sentence on defendant's sexual-assault conviction, giving him an additional two years to serve, and required that he participate in sex-offender treatment within the facility. The court warned defendant that any future violation would likely result in the revocation of his probation such that he would serve the suspended portion of his sentence. This appeal followed.

II. Analysis

"In a probation revocation hearing, the State carries the burden of proving by a preponderance of the evidence that the probationer has violated an express or clearly implied probation condition." *State v. Stuart*, 2018 VT 81, ¶ 10, 208 Vt. 127. If the State makes this showing, "the burden shifts to the probationer to prove the violation was not in his or her control, but rather resulted from extrinsic factors through no fault of the probationer." *Id.* "Whether a violation occurred is a mixed question of law and fact requiring the trial court to determine what

actions the defendant took and whether those actions violated the probation conditions.” State v. Provost, 2014 VT 86A, ¶ 12, 199 Vt. 568.

On appeal, “[f]indings of fact fairly and reasonably supported by any credible evidence must stand.” State v. Austin, 165 Vt. 389, 398 (1996). We will, in turn, uphold the court’s conclusion that defendant’s actions violated his probationary terms if “it is reasonably supported by the findings and is not an erroneous interpretation of the law.” State v. Burnett, 2020 VT 28, ¶ 13, 212 Vt. 80.

Defendant first argues that the State failed to prove that he violated condition 38 because his proximity to L.G. was incidental to his effort to secure housing, and that he did not have fair notice that this conduct would constitute unapproved contact with a female under sixteen. Specifically, he contends that he did not “initiate” or “maintain” contact with L.G. within the meaning of condition 38, pointing out that there was no evidence that he ever spoke with L.G., groomed her, or was alone with her, and that he had asked his probation officer about the residence.

Notice is often an issue in probation-violation cases because “due process requires that a defendant know what conduct is forbidden before the initiation of a probation revocation proceeding.” State v. Blaise, 2012 VT 2, ¶ 15, 191 Vt. 565 (mem.) (quotation omitted). Thus, as noted above, the State meets its burden to demonstrate a violation only “by showing that there has been a violation of the express conditions of probation, or of a condition so clearly implied that a probationer, in fairness, can be said to have notice of it.” Austin, 165 Vt. at 398 (quotation omitted).

In interpreting a probation condition, courts look to the plain and ordinary meaning of the language used. State v. Galanes, 2015 VT 80, ¶ 13, 199 Vt. 456. We have recognized that “probation conditions must retain a measure of flexibility, and probation officers may be granted a limited amount of discretion in implementing conditions.” State v. Galloway, 2020 VT 29, ¶ 13, 212 Vt. 91 (quotation omitted). The power to impose and modify probation conditions, however, rests with the courts, not employees of the DOC. Id.; 28 V.S.A. §§ 252(a), 253(a) (giving court power to impose and modify probation conditions). “The line between appropriate DOC implementation of probation conditions and impermissible modification is adherence to the plain language of the condition.” Galloway, 2020 VT 29, ¶ 13. Thus, “we have declined to read words into probation conditions, or to enforce a probation officer’s interpretation imposing requirements not reflected in the language of the condition.” Id. ¶ 14.

Here, the trial court explained:

[I]n terms of contact, I think the plain reading of it is that contact means in the private vicinity. That’s not going to Shaw’s and being in the checkout line and there happens to be a six-year-old, although best advice would be to stay away. But certainly, by the time you’re in the same apartment, in the same apartment building, following the six-year-old, that is contact. And if it’s not a clearly stated condition of probation, it is something which is clearly implied by the probation conditions that this was not okay, and it was not approved. So I do find a violation.

It further held that “[t]his was not an incidental contact at a fair or a grocery store but rather an intentional contact where [defendant] was in proximity with the child in an apartment building.”

The trial court's analysis reveals that defendant's notice argument is fundamentally misdirected. Although defendant contends that he was entitled to fair notice "that making an arrangement to stay at the apartment of a woman with a six-year-old child who often resided with her grandparents would lead to incarceration,"² this is not the conduct that formed the basis of the violation. The court did not, as defendant suggests, impermissibly convert the no-contact condition into a condition forbidding him from living in a building with minor children. Instead, it was defendant's intentional proximity to L.G. within her apartment building that formed the basis of the violation.

We have held that, in some circumstances, a defendant may fairly be charged with notice that intentional physical proximity with a person qualifies as "contact" within the meaning of a probation condition prohibiting the defendant from having unapproved contact with that person or individuals within a class to which the person belongs. See State v. Danaher, 174 Vt. 591, 594 (2002) (mem.) (affirming conclusion that defendant violated probation condition forbidding contact with sex-crimes victim by "intentional placement of himself in physical proximity to" her and holding that defendant could "fairly be charged with notice" that such conduct "qualifies as contact") (citing State v. Leggett, 167 Vt. 438, 441-42 (1997) (holding that evidence supported conclusion that defendant violated probation condition prohibiting unapproved contact with children under sixteen where he did not leave home or party where girls under that age were present)).

Defendant, however, analogizes this case to State v. Rivers, where we limited the scope of this "proximity-contact rule." 2005 VT 65, ¶ 13, 178 Vt. 180. In Rivers, the defendant appealed from the trial court's conclusion that he violated a probation condition prohibiting contact with children under the age of sixteen without the prior approval of his probation officer when he placed himself in close physical proximity to members of this class by standing near them in the lines for rides at a fair. We reversed, explaining that applying the no-contact condition to prohibit "nothing more than incidental proximity-contact in a public place with numerous, unspecified individuals who are members of an ubiquitous class" was "overbroad and unduly restrictive of probationer's freedom and autonomy." Id. ¶¶ 9, 13. But in doing so, we took care to note:

Unlike the public incidental contact at issue here, unapproved proximity-contact with minors in the context of a private residence presents greater dangers to the protected class and to a probationer's rehabilitation. In the public setting, a probationer is several steps removed from the opportunity to commit abuse. The opportunity to reoffend is substantially greater when a potential victim is isolated in a physical environment, like a residence, where a probationer could easily initiate abuse without having to overcome the logistical obstacles presented in a crowded public place.

² We note that there is no indication that the court made a finding regarding the frequency with which L.G. stayed with her grandparents or defendant's knowledge of the same. Rather, as discussed above, it found that T.G. and defendant understood that L.G. would sleep in T.G.'s room while defendant stayed at the apartment. In any event, for the reasons that follow, this issue is irrelevant to our analysis.

Id. ¶ 12. Thus, we explained, the proximity-contact rule continues to apply in the context of private locations as well as to victim-specific contact restrictions. Id. ¶ 13 (declining “to extend the proximity-contact rule beyond situations like those presented in Danaher and Leggett,” where “different considerations apply”). To be sure, this case involves a general no-contact condition like that at issue in Rivers. But the limitations articulated in Rivers do not apply here because defendant was in proximity to L.G. in a private place.³ Cf. State v. Bailey, 2010 VT 21, ¶¶ 5-7, 187 Vt. 624 (mem.) (affirming violation of probation condition prohibiting defendant from initiating or maintaining contact with children under eighteen and concluding that Rivers was not controlling because violation did not involve “incidental proximity-contact in a public place”). As a result, Rivers does not support defendant’s argument.

Defendant also contends that he did not “initiate” or “maintain” contact with L.G. within the plain meaning of those terms. In assessing the plain meaning of terms in a probation order, we “frequently turn[] to dictionary definitions.” Galanes, 2015 VT 80, ¶ 13. Because condition 38 prohibited defendant from either initiating or maintaining contact with females under sixteen, and because we conclude that the court’s findings support its conclusion that defendant maintained contact with L.G. within the plain meaning of this term, we need not reach defendant’s argument with respect to the term “initiate.” The dictionary definition of “maintain” includes “to keep in an existing state (as of repair, efficiency, or validity): preserve from failure or decline” and “to continue or persevere in : carry on, keep up.” Maintain, Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/maintain> (last visited Aug. 12, 2026). Here, the court found that despite realizing he was in proximity to a six-year-old girl, defendant did not remove himself from the situation—instead, he persevered in that contact. The plain language of condition 38 supports the court’s conclusion that defendant violated its terms by maintaining contact with L.G.

³ Defendant suggests that the evidence did not support the finding that he was ever in the apartment at the same time as L.G., only that he was in proximity to her in the common areas of the apartment building. He notes that the security-camera footage showed defendant with T.G. and L.G. in the common areas of the apartment building, and the only evidence that defendant was in the apartment with L.G. came through the testimony of T.G. and her step-grandfather, who each indicated that they had memory issues. The court acknowledged the witnesses’ memory deficits, but indicated that they pertained chiefly to dates, whereas T.G. in particular “was pretty adamant about remembering specific facts.” It therefore gave these witnesses’ testimony “less weight” with respect to dates than it did as to “specific fact.” It also noted that the footage captured defendant “in the hall outside the residence door.” For these reasons, defendant has not shown that the court’s finding that he “was clearly in a residence with a girl who was six years old” was not “fairly and reasonably supported by any credible evidence.” Austin, 165 Vt. at 397 (emphasis added) (quotation omitted); see Leggett, 167 Vt. at 443 (recognizing that it is for trial court to determine credibility of testimony in probation-violation proceeding). Moreover, because the court found that defendant’s continued contact with L.G. in the common areas of the apartment—specifically, by the point at which he followed her up the stairs—violated condition 38, we infer that the court determined that these areas, and not just the apartment itself, were places “in the private vicinity.” See Danaher, 174 Vt. at 593 (“This Court may presume that the lower court properly inferred essential facts from its factual findings.”). Defendant does not challenge this implicit conclusion. See Austin, 165 Vt. at 398 (recognizing that trial court must “make an implicit legal conclusion that certain acts constitute a violation of the probationary terms” (quotation omitted)).

For these reasons, the State met its burden to show that defendant violated a probation condition whose requirements were known to him. The burden therefore shifted to defendant to demonstrate “that his violation was not willful, but instead resulted from factors beyond his control and through no fault of his own.” State v. Coyle, 2005 VT 58, ¶ 8, 178 Vt. 580 (mem.). As defendant points out, “[t]he intent element in no-contact cases safeguards a defendant’s constitutional right to due process by ensuring that a defendant’s probation is not violated because of accidental or inadvertent conduct.” *Id.*; see *id.* ¶ 9 (explaining that, where probation violation based on defendant’s expulsion from court-ordered treatment program and satisfactory participation was “linked directly to his alleged inability to abide by the group’s no-contact rules,” “our analysis must heed the constitutional considerations involved in normal no-contact condition cases”). Whether a defendant’s probation violation was willful—or, in other words, intentional—“is a question of fact, and we will not disturb a trial court’s determination that the defendant acted willfully unless that determination was clearly erroneous.” State v. Anderson, 2016 VT 40, ¶ 13, 202 Vt. 1 (recognizing that “the words ‘willful’ and ‘intentional’ are generally synonyms in the criminal law” (quotation omitted)). Defendant has not shown that the court’s finding that his contact with L.G. was intentional is clearly erroneous.

As we have explained, “a no-contact policy violation can occur even when the initial contact was accidental or inadvertent,” because once a defendant realizes that the prohibited contact is occurring, he “ha[s] the responsibility to remove himself from the situation without delay.” Coyle, 2005 VT 58, ¶ 12 (concluding that defendant’s due-process rights were not violated where he was not sanctioned “for the aspects of unapproved contact that were beyond his control,” but only when he “intentionally failed to avoid unapproved contact after realizing that it had been initiated”). Such was the case here: the court found that defendant failed to remove himself from the situation after realizing he was with a six-year-old girl in her apartment building. Defendant contends that because the evidence did not show that it was his purpose to have contact with L.G., but instead that he had contact with L.G. as a consequence of his efforts to secure housing, there is no support for the finding that the contact was intentional. But as we have explained, it is defendant’s “burden to show that the actions underlying the violation were unintentional.” State v. Stern, 2018 VT 36, ¶ 12, 207 Vt. 479 (observing that while defendant “may not have intended to violate his probation, he intentionally possessed a firearm,” and upholding trial court’s finding that defendant’s conduct was willful). Defendant did not make that showing here.

Finally, defendant suggests that he had no choice but to continue his contact with L.G. in order to secure a residence. We need not consider here whether a probationer’s need for housing could support a conclusion that his violation of a no-contact provision was “due to circumstances beyond his control.” Anderson, 2016 VT 40, ¶ 13. Although defendant asserts that his conduct was “incidental to not living on the streets,” this contention is at odds with the court’s finding that while defendant “apparently didn’t really have a place to live” upon his release and “may have been couch-surfing,” he “had somebody whose house he was staying at.” The court’s finding that defendant had access to alternative housing is reasonably supported by the credible evidence. Defendant testified that he had stayed at a mutual friend’s residence for “several nights” after his release, but he explained that he did not wish to continue this arrangement because “there wasn’t really too much room for me,” he was sleeping on a couch “with . . . you know, hot and the animals,” and another person at the residence was recently on probation. Because defendant’s necessity-based argument is predicated on an assertion at odds with the court’s findings, we do not reach it.

Defendant has not shown that the court erred in concluding that he violated condition 38.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Nancy J. Waples, Associate Justice