

IN THE COURT OF APPEALS OF IOWA

No. 6-757 / 06-0477
Filed October 11, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MARCELENE LUCILLE BRAUGHTON,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, James D. Birkenholz,
Judge.

Marcelene Braughton appeals from the judgment and sentence entered
following her guilty plea to prostitution. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and David Adams, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney
General, John P. Sarcone, County Attorney, and Justin G. Allen, Assistant
County Attorney, for appellee.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

EISENHAUER, J.

Marcelene Braughton appeals from the judgment and sentence entered following her guilty plea to prostitution in violation of Iowa Code section 725.1 (2005). She contends she was illegally sentenced. We review her claim for an abuse of discretion. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996).

Braughton was sentenced to serve a term of incarceration not to exceed two years. The court suspended the sentence and Braughton was placed on two years probation. The court's order states in relevant part:

IT IS THE ORDER OF THE COURT that, as a condition of probation, the defendant shall remain out of the following area of the City of Des Moines, Iowa: University Avenue on the south, 9th St. on the west, Hickman Rd/Arlington Ave. on the north, and the Des Moines River on the east. This prohibited area is further defined by the map below. If the defendant enters this area, such entry will be considered a violation of probation and/or contempt of court. The defendant's probation office **may allow** the defendant to enter the prohibited area for specific employment, residence or probation needs.

No record was made to suggest the reasons for the area restrictions, although it may be assumed it related to the location of the alleged prostitution. Braughton contends this term of her probation is illegal because it violated her fundamental right to travel.

The legislature has given the courts broad, but not unlimited, authority in establishing the conditions of probation. *State v. Jorgensen*, 588 N.W.2d 686, 687 (Iowa 1998). Probationers are subject to any reasonable conditions the court may impose to promote rehabilitation of the defendant or protection of the community. *Id.* Conditions of probation must not be unreasonable or arbitrary. *State v. Ogle*, 430 N.W.2d 382, 383 (Iowa 1988). Although probationers, by virtue of their convictions, must be subject to greater restrictions of their

constitutional rights than ordinary citizens, a district court's discretion in establishing probation conditions is carefully scrutinized when a condition restricts fundamental rights. *State v. Franklin*, 604 N.W.2d 79, 82 (Minn. 2000). Interstate travel is classified as a “fundamental right” for substantive due process and equal protection purposes. *City of Panora v. Simmons*, 445 N.W.2d 363, 367 (Iowa 1989). The question of whether intrastate travel is a fundamental right is unsettled, but we will assume without deciding that it is.

The State cites to *Oyoghok v. Municipality of Anchorage*, 641 P.2d 1267 (Alaska Ct. App. 1982) as persuasive authority and we find it instructive. In *Oyoghok*, the defendant was convicted of two counts of soliciting prostitution. *Oyoghok*, 641 P.2d at 1268. As a special condition of her probation, she was prohibited from being within a two-block radius of an area known for street prostitution where one of her arrests occurred. *Id.* In considering whether the challenged condition of probation was reasonably related to the goal of her rehabilitation and whether it was unduly restrictive of her liberty, the Alaska Court of Appeals found:

While we believe Oyoghok's arguments have a good deal of merit when viewed in the abstract, we do not think they are persuasive under the circumstances of this case. All of Oyoghok's violations occurred at night, in the virtual epicenter of the proscribed area. These incidents were unrelated to travel by Oyoghok through the area or to her use of stores, restaurants, or offices in the vicinity. At no point has Oyoghok contended that she was lawfully employed or seeking employment in this area, nor does it appear from the record that Oyoghok resided in the restricted area or had any legitimate need to visit or travel through it As applied to Oyoghok, the special condition of probation imposed by the district court was reasonably related to achieving her rehabilitation. The record establishes that the area in the immediate vicinity of Fourth Avenue and C Street is the primary, if not the only, area of street prostitution within the City of Anchorage. Oyoghok's convictions resulted from offenses involving street prostitution. Moreover, there

has been no showing that the special condition unduly impinged upon Oyoghok's liberty.

Id. at 1270.

Here, Braughton was arrested for prostitution within the area which she is prohibited from entering as a condition of her probation. She listed her address as Earlham, Iowa in her written guilty plea. No record was made to suggest the limitation affected where she worked, lived, shopped, visited family, or any other legitimate reason to be in the area. Her probation officer may allow Braughton to enter this area "for specific employment, residence or probation needs." Under these facts, we conclude the probation condition is neither unreasonable nor arbitrary. Accordingly, we affirm.

AFFIRMED.