

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-20058

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL PATRICK MURPHY,

Defendant-Appellant.

Appeal from the United States District Court
For the Southern District of Texas

(CR-H-93-166-02)

(February 6, 1995)

Before POLITZ, Chief Judge, HIGGINBOTHAM and DeMOSS, Circuit
Judges.

PER CURIAM:*

This is Michael Patrick Murphy's appeal of the sentence
imposed on him after his guilty plea. We affirm.

I.

*Local Rule 47.5 provides: "The publication of opinions that
have no precedential value and merely decide particular cases on
the basis of well-settled principles of law imposes needless
expense on the public and burdens on the legal profession."
Pursuant to that Rule, the Court has determined that this opinion
should not be published.

Murphy's estranged wife, Stephanie Vincent Murphy, embezzled \$418,460 from the bank at which she worked and gave \$407,860 of that money to Murphy, who spent it. Murphy pleaded guilty to engaging in a monetary transaction in criminally derived property. He was sentenced to serve 30 months in prison and three years on supervised release with certain conditions and to pay a fine of \$6,000.

II.

Murphy argues first that the district court improperly conditioned his supervised release on (1) his granting the probation officer access to any financial information that the probation officer requests and (2) his incurring no debt without approval of the probation officer throughout his term of supervised release. Because Murphy did not raise this argument in the district court, we review for plain error. See United States v. Olano, 113 S. Ct. 1770, 1776-1779 (1993). Accordingly, for us to conclude that Murphy should be re-sentenced, "[t]here must be an 'error' that is 'plain' and that 'affect[s] substantial rights.'" Id. at 1776.

A.

Before we address the merits of Murphy's claim, we note that the sentencing court's written order regarding the second aspect of Murphy's condition of supervised release is inconsistent with the court's oral order regarding the same. The Sentencing Guidelines prescribe that a court may impose the following additional

conditions of supervised release in relation to the payment of a fine or restitution:

If an installment schedule of payment of restitution or fines is imposed, it is recommended that the court impose a condition prohibiting the defendant from incurring new credit charges or opening additional lines of credit without approval of the probation officer unless the defendant is in compliance with the payment schedule.

U.S.S.G. § 5B1.4(b)(17) (emphasis added). The court in its written sentencing order borrowed substantially from § 5B1.4(b)(17). The court wrote:

The defendant is required to provide the probation officer access to any requested financial information. If a fine or restitution amount has been imposed, the defendant is prohibited from incurring new credit charges or opening additional lines of credit without approval of the probation officer, unless the defendant is in compliance with the fine or restitution payment schedule.

In its oral pronouncement of Murphy's sentence, however, the court deviated from its written order when it stated:

You will comply with all the standard conditions of supervised release that have been adopted by this Court. And you will abide by the following special conditions: That is, that you will provide the probation officer with access to any requested financial information. You will not incur any new credit charges or open any additional lines of credit without the approval of your probation officer.

The oral sentence, unlike the written sentence, requires Murphy to obtain the probation officer's approval before incurring any debt throughout the term of his supervised release, regardless of whether he has paid his fine.

Thus, we are posed with the problem that the sentencing court imposed varying conditions on Murphy's supervised release. When an oral sentence varies from a written sentence, we have established that the oral sentence prevails. United States v. Shaw, 920 F.2d

1225, 1231 (5th Cir. 1991); United States v. Chagra, 669 F.2d 241, 261 n.29 (5th Cir. 1982); Schurmann v. United States, 658 F.2d 389, 391 (5th Cir. 1981). We are permitted to refer to the written sentence if the oral sentence is ambiguous, but we are prohibited from using the written sentence to impeach an otherwise unambiguous oral sentence. Chagra, 669 F.2d at 261 n.29 (citing Schurmann, 658 F.2d at 391).

We find that the sentencing court's oral sentence in this case is unambiguous: unless his probation officer approves otherwise, Murphy may not incur debt throughout the period of his supervised release, regardless of whether he has paid his fine. We recognize that the court in orally announcing Murphy's sentence may have inadvertently omitted the qualifying language found in the written sentence, which is derived from § 5B1.4(b)(17) of the guidelines. Nevertheless, we are bound by Shaw, Chagra and Schurmann. The sentencing court's oral sentence controls.

B.

Applying the plain error standard, we now proceed to a discussion of whether Murphy's sentence was proper. A condition of probation is not necessarily invalid merely because it impairs a probationer's enjoyment of constitutional rights. United States v. Stafford, 983 F.2d 25, 28 (5th Cir. 1993). Discretionary conditions of probation, however, must be "reasonably related" to the goals of sentencing and involve "only such deprivations of liberty and property as are reasonably necessary for these purposes." Id. at 28.

In this case, Murphy admitted that he accepted a very substantial amount of money from his estranged wife and yet apparently could only account for a small portion of that money, stating that he frittered it away on strip joints and pickup trucks. The district court imposed a fine or restitution as part of Murphy's sentence, which could properly be accompanied by special conditions. U.S.S.G. § 5B1.4(b)(18). The special conditions imposed by the district court are not plain error inasmuch as they reasonably relate to the goals of sentencing, and involve only such deprivations of liberty and property as are reasonably necessary for these purposes.¹

III.

Murphy next argues that the district court should have imposed a three-level reduction rather than a two-level reduction for acceptance of responsibility. We review the district court's finding on the defendant's acceptance of responsibility for clear error, "a standard of review even more deferential than a pure clearly erroneous standard." United States v. Tello, 9 F.3d 1119, 1122 (5th Cir. 1993). The record shows that the trial of Murphy's case was apparently continued twice and that, during this time, the government filed its requested voir dire and jury instructions, and Murphy consulted with experts. Under these circumstances, the district court's refusal to impose a three-level reduction for acceptance of responsibility was not clear error.

¹Our decision in Stafford, 983 F.2d at 26, 28-29, is distinguishable because the court in that case did not impose a sentence of a fine, restitution, or forfeiture.

IV.

For the foregoing reasons, the district court is AFFIRMED.