

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
Docket No.: 11-CR-449
JCN-KEN-10/17/2013

STATE OF MAINE,

v.

ORDER

CHRISTOPHER KAKLEGIAN,

Defendant

This matter was heard on October 10, 2013, on the State's Motion for Probation Revocation. Assistant District Attorney Tracy DeVoll represented the State. Attorney Kevin Sullivan represented the Defendant.

Through its motion, the State contends that Defendant violated the terms of his probation by failing to pay the restitution that was ordered as a condition of Defendant's probation. Defendant maintains that the State has not demonstrated that he "inexcusably failed to comply" with the probation condition. 17-A M.R.S. § 1206(6) (2012).

The hearing revealed that on August 9, 2011, upon a conviction for Aggravated Criminal Mischief, the Court sentenced Defendant to 4 years to the Department of Corrections with all but 120 days suspended, and placed Defendant on 2 years of probation. As a condition of probation, the Court ordered that Defendant shall "pay restitution in the maximum amount of \$7,100 ... on a schedule set by ... your probation officer ..." Probation subsequently established at least three schedules for Defendant's

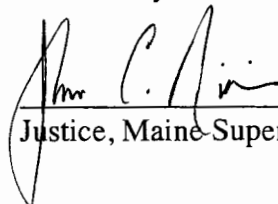
restitution payments pursuant to which schedules Defendant was to pay either \$25 or \$50 each month. Defendant has paid between \$790 and \$845 in restitution.

17-A M.R.S. § 1206(6) (2012) provides that “[i]f the alleged violation does not constitute a crime and the court finds by a preponderance of the evidence that the person has inexcusably failed to comply with a requirement imposed as a condition of probation, it may revoke probation.” While Defendant did not make every payment in accordance with the schedules established by probation, Defendant would not have satisfied the restitution obligation (\$7,100) in full even if Defendant made every scheduled payment.

In this case, the State has not established that Defendant “inexcusably failed” to pay the restitution. Given Defendant’s limited resources, the Court cannot conclude that Defendant could have satisfied his restitution obligation as of the date of the hearing on the State’s motion. Accordingly, the Court denies the State’s Motion for Probation Revocation.

The Clerk shall incorporate this Order into the docket by reference.

Dated: 10/17/13


Justice, Maine Superior Court

STATE OF MAINE
vs
CHRISTOPHER LEE KAKLEGIAN
37 CASCO STREET APT 106
PORTLAND ME 04101

SUPERIOR COURT
KENNEBEC, ss.
Docket No AUGSC-CR-2011-00449

DOCKET RECORD

DOB: 06/09/1991
Attorney: KEVIN SULLIVAN
VERITAS LAW OFFICES PC
72 WINTHROP STREET
AUGUSTA ME 04330
APPOINTED 09/10/2013

State's Attorney: EVERT FOWLE

Filing Document: CRIMINAL COMPLAINT
Filing Date: 06/24/2011

Major Case Type: FELONY (CLASS A,B,C)

Charge(s)

1	ARSON				06/24/2011 FARMINGDALE
Seq	776	17-A	802(1)(A)	Class A	
	HASTINGS		/ MFM		
2	CRIMINAL MISCHIEF				06/24/2011 FARMINGDALE
Seq	4959	17-A	806(1)(A)	Class D	
	HASTINGS		/ MFM		
3	FAILURE TO CONTROL OR REPORT A DANGEROUS FIRE				06/24/2011 FARMINGDALE
Seq	778	17-A	804(1)(A)	Class D	
	HASTINGS		/ MFM		
4	AGGRAVATED CRIMINAL MISCHIEF				06/24/2011 FARMINGDALE
Seq	7212	17-A	805(1)(E)	Class C	
	HASTINGS		/ MFM		

Docket Events:

06/24/2011 FILING DOCUMENT - CRIMINAL COMPLAINT FILED ON 06/24/2011

06/24/2011 Charge(s): 1,2,3

HEARING - INITIAL APPEARANCE SCHEDULE OTHER COURT ON 06/24/2011 at 01:00 p.m.

AUGDC

06/27/2011 Charge(s): 1,2,3

HEARING - INITIAL APPEARANCE HELD ON 06/24/2011

06/27/2011 Charge(s): 1,2,3

HEARING - STATUS CONFERENCE SCHEDULED FOR 09/13/2011 at 10:00 a.m.

06/27/2011 Charge(s): 1,2,3

PLEA - NO ANSWER ENTERED BY DEFENDANT ON 06/24/2011

06/27/2011 BAIL BOND - \$10,000.00 CASH BAIL BOND SET BY COURT ON 06/24/2011

OR 100,000 SURETY, NOT TO USE OR POSSESS ANY ALCOHOL, ILLEGAL DRUGS AND INCENDIARY

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Printed on: 10/17/2013

DEVICES, SUBMIT TO SEARCH AND TESTING AT ANY TIME WITHOUT PROBABLE CAUSE, NO CONTACT WITH
CORY HALL, BAIL MAY BE REVIEWED UPON APPOINTMENT OF COUNSEL.

06/27/2011 MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 06/24/2011

07/09/2011 MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 06/24/2011

COPY TO PARTIES/COUNSEL

07/09/2011 Party(s): CHRISTOPHER LEE KAKLEGIAN
ATTORNEY - APPOINTED ORDERED ON 06/24/2011

Attorney: TYLER SMITH

07/09/2011 Charge(s): 1,2,3
HEARING - STATUS CONFERENCE NOTICE SENT ON 07/08/2011

07/14/2011 Charge(s): 1,2,3
NOTE - OTHER CASE NOTE ENTERED ON 07/11/2011

LETTER FORM DEFENDANT ASKING FOR KEVIN SULLIVAN FOR AN ATTORNEY.

07/28/2011 MOTION - MOTION FOR SPEEDY TRIAL FILED BY DEFENDANT ON 07/28/2011

08/02/2011 MOTION - OTHER MOTION FILED BY DEFENDANT ON 08/01/2011

MOTION FOR BAIL REVIEW

08/02/2011 HEARING - OTHER MOTION SCHEDULED FOR 08/09/2011 at 08:30 a.m.

MOTION FOR BAIL REVIEW

08/09/2011 Charge(s): 4
PLEA - GUILTY ENTERED BY DEFENDANT ON 08/09/2011

INSERTED VIA FEE PROCESSING

Charge(s): 4
FINDING - GUILTY ENTERED BY COURT ON 08/09/2011

INSERTED VIA FEE PROCESSING

Charge(s): 4
RULING - ORIGINAL ORDERED ON 08/09/2011

INSERTED VIA FEE PROCESSING

It is adjudged that the defendant is guilty of 4 AGGRAVATED CRIMINAL MISCHIEF 17-A 805(1) (E)
Class C as charged and convicted.

The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 4 year(s).

It is ordered that all but 120 day(s) of the sentence as it relates to confinement be suspended.

It is ordered that the defendant be placed on a period of probation for a term of 2 year(s) upon
conditions attached hereto and incorporated by reference herein.

Said Probation to commence after completion of the unsuspended term of imprisonment.

It is ordered that the defendant forfeit and pay the sum of \$7100.00 as restitution through the
District Attorney's Office.

Special Conditions of Probation:

Restitution joint and several with joined defendant.

1. refrain from all criminal conduct and violation of federal, state and local laws.
 2. report to the probation officer immediately and thereafter as directed and within 48 hours of your release from jail.
 3. answer all questions by your probation officer and permit the officer to visit you at your home or elsewhere.
 4. obtain permission from your probation officer before changing your address or employment.
 5. not leave the State of Maine without written permission of your probation officer.
 6. maintain employment and devote yourself to an approved employment or education program.
 7. not possess or use any unlawful drugs and not possess or use alcohol.
 8. identify yourself as a probationer to any law enforcement officer if you are arrested, detained or questioned for any reason and notify your probation officer of that contact within 24 hours.
 9. waive extradition back to the State of Maine from any other place.
 10. not own, possess or use any firearm or dangerous weapon if you have ever been convicted of a crime in any jurisdiction with a potential penalty of one year or more or any crime involving domestic violence or the use of a firearm or dangerous weapon.
 11. pay to the Department of Corrections a supervision fee of \$ 10.00 per month.
- 12a. provide a DNA sample if convicted of applicable offense listed in 25 MRSA Section 1574.
12b. If convicted of an offense requiring registration under the Sex Offender Registration and Notification Act, fully comply with the requirements of that statute.
submit to random search and testing for alcohol at the direction of a law enforcement officer.
submit to random search and testing for drugs at the direction of a law enforcement officer.

complete counseling and treatment as an out-patient for BE EVALUATED BY PO/MUST NOT MIS USE PRESCRIBED MEDICATIONS. issues and sign any releases requested by your probation officer.

complete counseling and treatment as an in-patient at or a similar facility as directed by your probation officer for BE EVALUATED BY PO/MUST NOT MIS USE PRESCRIBED MEDICATIONS. issues and sign any releases requested by your probation officer.

pay restitution as stated earlier.

Have no contact of any kind with SARGENT'S CONSTRUCTION and the family of said person.
NOT TO RETURN TO THE TO THERE PREMISES.

08/16/2011 HEARING - OTHER MOTION NOT HELD ON 08/09/2011

MOTION FOR BAIL REVIEW

08/16/2011 MOTION - OTHER MOTION WITHDRAWN ON 08/09/2011

MOTION FOR BAIL REVIEW

08/16/2011 MOTION - MOTION FOR SPEEDY TRIAL WITHDRAWN ON 08/09/2011

08/16/2011 Charge(s): 1,2,3

HEARING - STATUS CONFERENCE NOT HELD ON 08/09/2011

08/16/2011 Charge(s): 4

RULING - ORIGINAL ISSUED ON 08/09/2011

M MICHAELA MURPHY , JUSTICE

DEFENDANT ACKNOWLEDGES RECEIPT

08/17/2011 Charge(s): 1,2,3

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FINDING - DIS BY DA/AG-PLED OTHER CHARGE ENTERED ON 08/10/2011

01/20/2012 MOTION - MOTION AMEND COND PROBATION FILED BY STATE ON 01/20/2012

01/26/2012 MOTION - MOTION AMEND COND PROBATION GRANTED ON 01/25/2012
NANCY MILLS , JUSTICE
COPIES TO PARTIES/COUNSEL

01/26/2012 Charge(s): 4
RULING - AMENDMENT ORDERED ON 01/25/2012
NANCY MILLS , JUSTICE
It is adjudged that the defendant is guilty of 4 AGGRAVATED CRIMINAL MISCHIEF 17-A 805(1) (E)
Class C as charged and convicted.

The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 4 year(s).

It is ordered that all but 120 day(s) of the sentence as it relates to confinement be suspended.

It is ordered that the defendant be placed on a period of probation for a term of 2 year(s) upon conditions attached hereto and incorporated by reference herein.

Said Probation to commence after completion of the unsuspended term of imprisonment.

It is ordered that the defendant forfeit and pay the sum of \$7100.00 as restitution through the District Attorney's Office.

Restitution joint and several with joined defendant.
\$ 25 VICTIMS COMPENSATION FUND
TOTAL DUE:\$ 25.00.

Have no contact of any kind with SARGENT'S CONSTRUCTION and the family of said person.
NOT TO RETURN TO THE TO THERE PREMISES.

01/26/2012 Charge(s): 4
RULING - AMENDMENT ISSUED ON 01/25/2012
NANCY MILLS , JUSTICE

08/29/2013 Charge(s): 1
FILING DOCUMENT - FIRST MOTION PROB REVOCATION FILED ON 08/29/2013

TOGETHER WITH AFFIDAVIT IN SUPPORT OF PC
08/29/2013 HEARING - PV INITIAL APPEARANCE SCHEDULED FOR 09/10/2013 at 08:30 a.m.

09/09/2013 Charge(s): 4
MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 09/09/2013

09/10/2013 Charge(s): 4
MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 09/10/2013
DONALD H MARDEN , JUSTICE

09/10/2013 HEARING - PV INITIAL APPEARANCE HELD ON 09/10/2013
DONALD H MARDEN , JUSTICE

09/10/2013 HEARING - PROBATION REVOCATION SCHEDULED FOR 12/04/2013 at 08:30 a.m.

09/10/2013 Charge(s): 4
PLEA - ADMIT ENTERED BY DEFENDANT ON 09/10/2013

09/10/2013 Party(s): CHRISTOPHER LEE KAKLEGIAN
ATTORNEY - APPOINTED ORDERED ON 09/10/2013

Attorney: KEVIN SULLIVAN

09/10/2013 BAIL BOND - \$500.00 UNSECURED BAIL BOND SET BY COURT ON 09/10/2013
DONALD H MARDEN , JUSTICE
ABIDE BY CONDITIONS OF PROBATION

09/10/2013 BAIL BOND - \$500.00 UNSECURED BAIL BOND FILED ON 09/10/2013

Bail Amt: \$500

Date Bailed: 09/10/2013

09/10/2013 HEARING - PROBATION REVOCATION NOTICE SENT ON 09/10/2013

09/10/2013 MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 09/10/2013

09/12/2013 MOTION - MOTION FOR APPOINTMENT OF CNSL MOOT ON 09/11/2013
DONALD H MARDEN , JUSTICE

09/17/2013 Charge(s): 1
HEARING - PROBATION REVOCATION SCHEDULED FOR 10/10/2013 at 08:30 a.m.

09/17/2013 Charge(s): 1
HEARING - PROBATION REVOCATION NOTICE SENT ON 09/17/2013

09/18/2013 LETTER - FROM PARTY FILED ON 09/17/2013

ASKING TO MOVE UP THE COURT DATE TO 10-10-13 MOTION DAY.

10/17/2013 Charge(s): 1
HEARING - PROBATION REVOCATION HELD ON 10/10/2013
JOHN NIVISON , JUSTICE
Attorney: KEVIN SULLIVAN
DA: TRACY DEVOLL
Defendant Present in Court

10/17/2013 HEARING - PROBATION REVOCATION NOT HELD ON 10/17/2013

10/17/2013 ORDER - COURT ORDER ENTERED ON 10/17/2013
JOHN NIVISON , JUSTICE
IN THIS CASE, THE STATE HAS NOT ESTABLISHED THAT DEFENDANT "INEXCUSABLY FAILED" TO PAY THE
RESTITUTION. GIVEN DEFENDANT'S LIMITED RESOURCES, THE COURT CANNOT CONCLUDE THAT
DEFENDANT COULD HAVE SATISFIED HIS RESTITUTION OBLIGATION AS OF THE DATE OF THE HEARING ON
THE STATE'S MOTION. ACCORDINGLY, THE COURT DENIES THE STATE'S MOTION FOR PROBATION
REVOCATION

10/17/2013 Charge(s): 4
FINDING - PROBATION NOT VIOLATED ENTERED BY COURT ON 10/17/2013
JOHN NIVISON , JUSTICE

10/17/2013 BAIL BOND - UNSECURED BAIL BOND BAIL RELEASED ON 10/17/2013

Date Bailed: 09/10/2013

Receipts

08/09/2011	Case Payment	\$25.00	CA	paid.
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A TRUE COPY

ATTEST: _____
Clerk