

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D24420
H/hu

_____AD3d_____

Argued - June 18, 2009

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
LEONARD B. AUSTIN, JJ.

2007-10177

DECISION & ORDER

The People, etc., respondent,
v Herbert Hannah, appellant.

(Ind. No. 3346-06)

Robert C. Mitchell, Riverhead, N.Y. (James H. Miller III and Kirk Brandt of counsel),
for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Grazia DiVincenzo and Guy
Arcidiacono of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Kahn,
J.), rendered September 6, 2007, convicting him of rape in the second degree, upon his plea of guilty,
and imposing sentence.

ORDERED that the judgment is affirmed.

In 2007 the defendant was convicted, upon his plea of guilty, of rape in the second
degree for engaging in sexual intercourse with a 14-year-old victim and was sentenced to 10 years
probation. The sentence of probation included certain “Sex Offender Conditions of Probation”
which, inter alia, prevented the defendant from living “at a location where anyone under the age of
18 resides without the permission of the Probation Officer.” The defendant contends that the subject
conditions of probation violated his constitutional right to participate in the care, custody, and
management of his natural children.

Penal Law § 65.10 authorizes a court to impose conditions of probation which “the
court, in its discretion, deems reasonably necessary to insure that the defendant will lead a law-abiding

life or to assist him to do so” (Penal Law § 65.10[1]). When imposing a sentence of probation, the court may require the defendant to comply with “any other reasonable condition as the court shall determine to be necessary or appropriate to ameliorate the conduct which gave rise to the offense or to prevent the incarceration of the defendant” (Penal Law § 65.10[5]; *see People v Rocco*, 309 AD2d 882). The statute also grants the court “wide latitude” to require a defendant to “[s]atisfy any other conditions reasonably related to his [or her] rehabilitation” (Penal Law § 65.10[2][1]; *see People v Griffith*, 239 AD2d 705, 706). Under the circumstances, the subject conditions of probation were reasonably necessary to insure that the defendant will lead a law-abiding life (*see People v McAllister*, 150 AD2d 913, 914), and were reasonably related to advancing the defendant’s rehabilitation for the sexual offense he perpetrated on the 14-year-old child (*see People v Swenson*, 12 AD3d 948; *People v Griffith*, 239 AD2d at 706).

We reject the defendant’s contention that the subject conditions of probation violated his constitutional rights (*see People v Whindleton*, 54 AD3d 422, 423; *People v Wahl*, 302 AD2d 976). “Although parents enjoy a constitutionally protected interest in their family integrity, this interest is counterbalanced by the compelling governmental interest in the protection of minor children, particularly in circumstances where the protection is considered necessary as against the parents themselves” (*Wilkinson v Russell*, 182 F3d 89, 104 [internal citations and quotation marks omitted], *cert denied* 528 US 1155). Accordingly, the subject conditions of probation were properly imposed and were not violative of the defendant’s constitutional rights.

RIVERA, J.P., FLORIO, DICKERSON and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court