

U.S. v. Carlineo: Restorative Justice as an “Unusual” Special Condition of Supervised Release

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1. Institution or tribunal that renders or administers the decision

United States Second Circuit Court of Appeals

2. Country and/or place of the decisión

United States of America

3. Name of the judges or arbitrators

Judge Barrington D. Parker

4. Date of the decision

May 25, 2021

5. Case number or file number

No. 20-1020-cr

6. Type of decision

Court’s decision on the merits

7. Subject matter of the decision

Criminal Law

8. Parties

Defendant-Appellant: Patrick W. Carlineo, Jr.

Appellee: United States of America

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9. Applicable law and rules

United States Federal Law

10. Summary of the Controversy

Fact Summary: On March 21, 2019, Patrick W. Carlineo, Jr. called the office of Congresswoman Ilhan Omar and spoke with a member of her staff. He said, “Do you work for the Muslim Brotherhood? Why are you working for her? She’s a fucking terrorist. I’ll put a bullet in her fucking skull.” Carlineo later admitted to making the call during an FBI interview. He explained that he did so because he hates individuals whom he believes are radical Muslims holding positions in the U.S. government and he views Congresswoman Omar as one such individual. The FBI agents later executed a search warrant at Carlineo’s home and found shotguns, rifles, and a pistol, which he was not permitted to possess due to his criminal record.

Procedural Summary: Carlineo pleaded guilty to charges of threatening a United States official and being a felon in possession of firearms pursuant to a plea agreement. The United States District Court for the Western District of New York sentenced Carlineo to one year and one day in prison followed by three years of supervised release. The sentencing judge imposed standard and special conditions of supervised release, including one that Carlineo challenged: participation in the Partners in Restorative Initiatives restorative justice program. Prior to sentencing Carlineo, the sentencing court had received a letter from Congresswoman Omar specifically requesting that the court apply a restorative justice approach rather than impose a sentence of incarceration or financial penalty. The court also received a letter from the founder of Partners in Restorative Initiatives setting out restorative justice options for the court to consider. Carlineo moved to vacate this special condition and the district court denied his motion. He appealed this denial to the Second Circuit Court of Appeals.

11. Parties’ positions

(i) Defendant-Appellant

Carlineo argued that the special restorative justice condition must be vacated because it was vague and overbroad, impermissibly delegated judicial sentencing authority to the Probation Office, and was not reasonably related to the crime because his threats were motivated by his political beliefs rather

than by racial or religious bigotry, the latter of which the restorative justice program was intended to address¹.

(ii) Appellee

The U.S. argued that the special condition should be affirmed because it was “crystal clear,” was not an impermissible delegation of authority because the district court decided in which specific program Carlineo was required to participate (Partners in Restorative Initiatives), and was sufficiently related to Carlineo’s concerning use of the word, “Muslims,” in his threats².

12. Decision

The Second Circuit held that the district court had abused its discretion in imposing the special restorative justice condition of Carlineo’s supervised released and vacated this special condition.

13. Rationale of the decision

The Second Circuit articulated two grounds for its decision to vacate the special restorative justice condition: (1) undue vagueness and (2) improper delegation of authority to the Probation Office³. First, the court concluded that the special condition was impermissibly vague because the district court had failed to specify the type or frequency of restorative justice activities Carlineo was required to complete and had failed to provide him with sufficient notice of what conduct would constitute a violation of the condition⁴. The fact that the Partners in Restorative Initiatives program had not been approved by the U.S. Probation Office, as required by the federal Sentencing Guidelines, contributed to the court’s vagueness holding⁵.

Second, the court reasoned that the district court’s failure to sufficiently define the special condition resulted in an impermissible delegation of the district court’s sentencing authority to the Probation Office⁶. If the special condition were permitted to stand, the Probation Office would have had discretion over material terms of Carlineo’s sentence—decision-making

¹ U.S. Court of Appeals for the Second Circuit, Brief for Defendant–Appellant at 3–7, 25–29, 34–49, *United States v. Carlineo*, 998 F.3d 533 (2d Cir. 2021) (No. 20-1020-cr).

² U.S. Court of Appeals for the Second Circuit, Brief for Appellee at 7, 10–11, *United States v. Carlineo*, 998 F.3d 533 (2d Cir. 2021) (No. 20-1020-cr).

³ *United States v. Carlineo*, 988 F.3d 533, 533 (2d Cir. 2021).

⁴ *United States v. Carlineo*, 988 F.3d at 537.

⁵ *United States v. Carlineo*, 988 F.3d at 537.

⁶ *United States v. Carlineo*, 988 F.3d at 537-38.

authority that must be exercised by the sentencing court rather than delegated⁷.

⁷ *United States v. Carlineo*, 988 F.3d at 537-38.

14. Brief comment of the author

A widespread assumption is that victims of crime desire retribution against the person who harmed them in the form of the harshest possible sentence.⁸ But crime victims are not a monolith⁹. Some victims, like Congresswoman Ilhan Omar, wish for a different outcome—one rooted in healing, repair, accountability, and addressing the root causes of offending¹⁰.

Before Carlineo’s sentencing, Congresswoman Omar sent a letter to the district court judge requesting that compassion be applied in deciding the sentence¹¹. She explained: “A punitive approach to criminal justice will not stop criminals like Mr. Carlineo from committing a crime again or prevent others from committing similar acts. Only restorative justice can do that”¹². Though not obligated to do so, the sentencing judge clearly considered Congresswoman Omar’s wishes when including what the Second Circuit Court of Appeals described as an “unusual” special condition of supervised release in Carlineo’s sentence: participation in the Partners in Restorative Initiatives program¹³.

In its opinion, the Second Circuit explained that “[s]pecial conditions must meet certain statutory requirements[: they]... must be reasonably related to ‘(A) the nature and circumstances of the offense and the history and characteristics of the defendant; (B) the need for the sentence imposed to afford adequate deterrence to criminal conduct; (C) the need to protect the public from further crimes of the defendant; and (D) the need to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.’” Notably, none of these requirements relate to the victim’s needs and wishes. This reflects the broader marginalization of victims within the conventional criminal legal process. In his seminal article, *Conflicts as Property*, criminologist Nils Christie asserts that the state appropriates victims’ “property” when it

⁸ Danielle Sered, *Until We Reckon: Violence, Mass Incarceration, and a Road to Repair* 20 (2019).

⁹ Lara Bazelon and Bruce A. Green, “Victims’ Rights from a Restorative Perspective,” 17 *Ohio State Journal of Criminal Law* 293, 295 (2020).

¹⁰ See Sered, *Until We Reckon*, supra note 8, at 42–46.

¹¹ Letter from Rep. Ilhan Omar to Hon. Frank P. Geraci, Jr., Chief Judge, U.S. District Court for the Western District of New York (Nov. 19, 2019), <https://x.com/IlhanMN/status/1196870032099364864/photo/1>.

¹² Letter from Rep. Ilhan Omar to Hon. Frank P. Geraci, Jr., Chief Judge, U.S. District Court for the Western District of New York (Nov. 19, 2019).

¹³ See *United States v. Carlineo*, 998 F.3d at 534.

assumes control of criminal cases¹⁴. He observes that “for most proceedings [the victim] is pushed completely out of the arena... [and] has lost the case to the state”¹⁵.

In contrast, restorative justice has been touted for its empowerment of victims, focus on meeting their needs, and provision of meaningful opportunities for their voluntary participation¹⁶. Although there is disagreement about its precise definition, restorative justice typically involves a facilitator who brings together “those who have a stake in a specific offense or harm to collectively identify and address harms, needs, and obligations in order to heal and put things as right as possible”¹⁷. Through restorative justice, victims of harm are able to articulate their own needs, have them centered in the justice response, and exercise a level of control over the process and outcome that is entirely unavailable to them in the mainstream criminal legal process in the U.S. and elsewhere¹⁸.

There exists a degree of tension between the Second Circuit’s requirement of specificity for a special condition to be upheld and restorative justice’s incorporation of flexibility and tailoring to individual situations and the particular stakeholders involved. It is very difficult to know exactly how long it will take for participants to engage with the harm and collaboratively develop an agreement for repair before a particular restorative justice process even begins. Yet, as the appeals court noted, the district court had not even specified which format the restorative justice requirement would take from among the options provided in the letter it had received from the founder of Partners in Restorative Initiatives: “(1) a sentencing circle, (2) a listening circle, (3) a combination of the listening circle and community service, and (4) community service”¹⁹. However, it is unlikely that specifying from among these options in the district court’s oral sentencing pronouncement or judgment would have been sufficient to save the special condition because the federal Sentencing Guidelines only authorize the imposition of special programmatic conditions for programs with Probation

¹⁴ Nils Christie, “Conflicts as Property,” 17 *British Journal of Criminology* 1, 3, 7–8 (1977).

¹⁵ Christie, “Conflicts as Property,” at 3.

¹⁶ Howard Zehr, *The Little Book of Restorative Justice: Revised and Updated* 21–23, 93 (2014); Bazelon and Green, “Victims’ Rights from a Restorative Perspective,” supra note 9, at 328–30, 333–34; Sered, *Until We Reckon*, supra note 8, at 96–128, 133–47.

¹⁷ Zehr, *The Little Book of Restorative Justice*, supra note 16, at 47–48.

¹⁸ See Zehr, *The Little Book of Restorative Justice*, supra note 16, at 21–23.

¹⁹ *United States v. Carlineo*, 998 F.3d at 535–37.

Office approval, which the Partners in Restorative Initiatives program lacked²⁰.

In light of the Second Circuit’s opinion in *Carlineo*, courts that wish to sentence a defendant to participation in restorative justice should, to the extent possible without compromising restorative justice principles and values, attempt to provide specifics about the format, frequency, and substance of the program activities to protect the special condition from being vacated due to vagueness. Moreover, restorative justice advocates should encourage probation offices to evaluate and approve restorative justice programs so they are available as legitimate options for judges to select when they are sentencing defendants.

On a more fundamental level, scholars, advocates, and policymakers should work to increase judges’ familiarity with restorative justice as a sentencing option with empirical support for its value and legitimacy²¹. It is telling that the Second Circuit refers to restorative justice as an “unusual” special condition in its opinion²², which underscores its underutilization within the U.S. criminal legal system. With efforts to raise awareness among sentencing judges and probation offices, hopefully restorative justice will no longer be regarded as “unusual” in the not-too-distant future.

²⁰ *United States v. Carlineo*, 998 F.3d at 537.

²¹ See, e.g., Heather Strang et al., “Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review,” 12 *Campbell Systematic Reviews* 1, 2 (2013) (finding that, “on average, RJs cause a modest but highly cost-effective reduction in repeat offending, with substantial benefits for victims,” based on the results of ten methodologically rigorous studies); Lindsay Fulham et al., “The Effectiveness of Restorative Justice Programs: A Meta-Analysis of Recidivism and Other Relevant Outcomes,” *Criminology & Criminal Justice* 1, 1–2, 14, 18–21 (2023) (concluding that restorative justice programs are associated with greater victim and client (offending party) satisfaction, better victim perceptions of procedural justice, greater client accountability, and modestly reduced general recidivism as compared to the conventional criminal legal system, but noting that certain results should be viewed with caution due to methodological weaknesses and/or outliers in some of the underlying studies); Ana M. Nascimento, Joana Andrade, and Andreia de Castro Rodrigues, “The Psychological Impact of Restorative Justice Practices on Victims of Crimes—a Systematic Review,” 24 *Trauma, Violence & Abuse* 1929, 1940–43 (2023) (finding extensive empirical support for the existence of positive psychological impacts of restorative justice (involving victim–offender meetings) for crime victims, including reduced post-traumatic stress symptomatology, lessened negative emotions, and an increased sense of validation and closure); Catherine S. Kimbrell, David B. Wilson, and Ajima Olaghere, “Restorative Justice Programs and Practices in Juvenile Justice: An Updated Systematic Review Meta-Analysis for Effectiveness,” 22 *Criminology & Public Policy* 161, 175, 183 (2022) (concluding that restorative justice programs and practices are associated with a greater reduction in future delinquent behavior (small-to-medium effect size), higher level of victim satisfaction (very large effect size), and better perceptions of fairness among both victims and youth participants (large effect size), as compared to the traditional juvenile justice system response to juvenile delinquency).

²² *United States v. Carlineo*, 998 F.3d at 534.