MEMORANDUM DECISION

APPELLANT PRO SE

James E. Manley
New Castle, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

David A. Arthur
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

James E. Manley,
Appellant-Petitioner,

v.

Mark Sevier and Steven Walker,
Appellees-Respondents.

March 28, 2023

Court of Appeals Case No. 22A-MI-1157

Appeal from the Monroe Circuit Court

The Honorable Darcie L. Fawcett, Judge

Trial Court Cause No. 53C09-2112-MI-2646

Memorandum Decision by Judge Robb
Judges Mathias and Foley concur.

Robb, Judge.

Case Summary and Issues

[1] James E. Manley, pro se, appeals the trial court's denial of his petition for a writ of habeas corpus.[1] Manley raises several issues for our review, which we restate as: 1) whether Mark Sevier and Stephen Walker (together, "Respondents") erred procedurally by filing a response to Manley's petition for a writ of habeas corpus; 2) whether Manley was deprived of credit time, in violation of his right to due process; 3) whether Manley should have been allowed to negotiate the conditions of his parole; 4) whether imposing on Manley parole conditions that were not in effect at the time he committed his offenses constituted an ex post facto law violation; 5) whether Respondents improperly imposed certain parole conditions on Manley; and 6) whether the Indiana Parole Board was required to proceed under the Indiana Administrative Rules and Procedures Act when it imposed parole conditions on Manley.

[2] Concluding that Respondents properly filed a response to Manley's petition, Manley was not deprived of credit time, Manley was not allowed to negotiate the conditions of his parole, no ex post facto law violation occurred, Manley waived his claim regarding the imposition of certain parole conditions, and the Indiana Parole Board was not required to proceed under the Administrative

[1] Manley filed his petition for a writ of habeas corpus against Mark Sevier, warden of the New Castle Correctional Facility, and "Steven" Walker. Although it is not entirely clear from the record on appeal, it appears Manley meant to file his petition against Stephen Walker, a parole officer employed by the Indiana Department of Correction, but misspelled Walker's first name. In this opinion, we use the correct spelling of Walker's first name.

Rules and Procedures Act when it imposed parole conditions on Manley, we affirm the trial court's denial of Manley's petition for a writ of habeas corpus.

Facts and Procedural History

[3] In 1997, Manley was convicted of two counts of child molesting as Class B felonies and two counts of child molesting as Class A felonies. The trial court sentenced Manley to fifteen years for each of the Class B felonies, to be served concurrently, and forty years for each of the Class A felonies, to be served concurrently with each other but consecutively to the Class-B-felony sentences. Manley's sentence was to be executed in the Indiana Department of Correction ("DOC"). On February 12, 2004, Manley completed the sentence imposed for his Class B felonies (less credit-time earned). The following day, he began serving the sentence imposed for his Class A felonies.

[4] On July 7, 2021, Manley, while still incarcerated, filed a petition for an emergency writ of habeas corpus, under lower court cause number 33C02-2107-MI-68 ("First Habeas Petition"). *See Manley v. Sevier*, No. 21A-MI-2486, 2022 WL 1279015 at *1 (Ind. Ct. App. Apr. 29, 2022), *trans. denied*. He sought immediate discharge from prison, arguing that "he should have been released on parole in 2015 and had been impermissibly imprisoned for six years." *Id.* The trial court denied Manley's First Habeas Petition on October 13. Manley appealed ("First Appeal").

[5] In his First Appeal, Manley argued that the trial court abused its discretion by denying his First Habeas Petition. *Id.* According to Manley, the DOC "failed to release [him] from physical custody after he completed his fixed term of imprisonment." *Id.* at *2 (quotation marks and citation omitted). Manley maintained that his "fixed term of imprisonment was ten years for his Class B felonies and thirty years for his Class A felonies, not the fifteen- and forty-year sentences he received." *Id.* (quotation marks and citation omitted). And he argued that the "sentence enhancements due to aggravating circumstances d[id] not change the 'fixed term' used to determine when he became eligible for parole under Indiana Code section 35-50-6-1(d) [(1994)]."[2] *Id.* We affirmed the trial court's decision, concluding that "Manley's suggested interpretation of the [sentencing] statutes [was] contrary to the legislature's intent[,]" and that the "'fixed term of imprisonment' that must be completed prior to being released on parole is the term of incarceration imposed by the trial court and includes any enhancement or reduction due to aggravating or mitigating circumstances." *Id.*

[6] On December 25, 2021, while Manley's First Appeal was pending, Manley was released to parole. Two days later, Manley met with his parole officer and signed forms that set forth parole stipulations for sex offenders. *See* Appellant's Appendix, Volume 2 at 59-62.

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[2] Indiana Code section 35-50-6-1(d) (1994) provides: "When an offender . . . completes the offender's fixed term of imprisonment, less credit time earned with respect to that term, the offender shall be placed on parole for not more than ten (10) years."

[7] On December 28, under cause number 53C09-2112-MI-2646, the lower court cause number for the instant appeal, Manley filed a second petition for an emergency writ of habeas corpus ("Second Habeas Petition"). This time, he filed his petition against Mark Sevier, the warden for the New Castle Correctional Facility, and Stephen Walker, a parole officer. In his Second Habeas Petition, Manley challenged the length of his sentence, the credit time imposed, his parole agreement, and his sex offender status; and he sought "immediate release from unlawful custody[.]" *Id.* at 7 (quotation marks omitted).

[8] On January 28, 2022, the trial court directed Respondents to file a response to Manley's Second Habeas Petition. The Respondents filed their response on April 25. On April 29, Manley filed a "Rebuttal" to the response. *Id.* at 43-51. And on May 2, Manley filed a Motion for Emergency Order of Protection, requesting "an order of protection prohibiting" Walker from imposing on Manley sex offender "Parole Stipulations[.]" *Id.* at 58.

[9] On May 9, 2022, the trial court issued its order denying Manley's Second Habeas Petition.[3] Manley now appeals. Additional facts will be provided as necessary.

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[3] Eleven days later, on May 20, 2022, Manley was arrested for violating the conditions of his parole. On June 15, 2022, his parole was revoked, and he has been returned to prison to serve the balance of his sentence.

Discussion and Decision

[10] Manley challenges the denial of his Second Habeas Petition. We initially note that Manley is proceeding pro se. Pro se litigants are held to the same legal standard as licensed attorneys and are afforded no inherent leniency simply by virtue of being self-represented. *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014).

I. Standard of Review

[11] "Every person whose liberty is restrained, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of the restraint, and shall be delivered from the restraint if the restraint is illegal." Ind. Code § 34-25.5-1-1. Although the Indiana Code administers habeas proceedings, "the privilege of the writ exists independent of the statute and flows from our constitution[.]" *Fry v. State*, 990 N.E.2d 429, 437 (Ind. 2013). "A petitioner is entitled to the writ only if he is entitled to be immediately released from unlawful incarceration." *Id.*

[12] We review the trial court's denial of Manley's Second Habeas Petition for an abuse of discretion but review any questions of law de novo. *See Hale v. State*, 992 N.E.2d 848, 852 (Ind. 2013). We do not reweigh evidence and consider only the evidence most favorable to the judgment. *Id.* We affirm on any basis sustainable by the record. *Benham v. State*, 637 N.E.2d 133, 138 (Ind. 1994).

II. Response to Manley's Second Habeas Petition

[13] In challenging the trial court's denial of his Second Habeas Petition, Manley first contends Respondents proceeded improperly by filing a response to his petition. According to Manley, Respondents, instead, were required to *return* Manley's petition. We cannot agree.

[14] After a petition or application for a writ of habeas corpus is filed, if appropriate, a writ of habeas corpus may be granted by the trial court. Ind. Code § 34-25.5-2-2(a). Such a writ "shall be directed to the office or party restraining the applicant, commanding the party to have the applicant before the court or judge, at the time and place the court or judge directs, to do and receive the court's order concerning the applicant." Ind. Code § 34-25.5-2-4. Indiana Code section 34-25.5-2-2(b) provides, "[u]pon application, *a writ granted* under [Indiana Code section 34-25.5-2-2(a)] shall be granted without delay." (Emphasis added.) Then once the writ is served, the "sheriff or other person to whom the writ is directed shall *return* the writ immediately and if the person to whom the writ is directed refuses after due service to return the writ, the court shall enforce obedience by attachment." Ind. Code § 34-25.5-3-4 (emphasis added).

[15] In Manley's case, the trial court did not issue a writ. Without a writ, "there cannot be a return[.]" *Masden v. State*, 265 Ind. 428, 431, 355 N.E.2d 398, 401

(1976). Therefore, Respondents proceeded properly by filing a response to Manley's Second Habeas Petition.[4]

III. Credit Time

[16] Next, Manley contends the DOC deprived him of earned credit time and that by not reducing his sentence based upon the credit time he earned, the DOC violated his right to due process under the Fourteenth Amendment to the United States Constitution. In that vein, Manley also contends his right to due process was violated "when [the DOC] deprived him of . . . credit time without providing him with the minimum [due process] procedures required." Brief of the Appellant at 28. However, Manley's arguments miss the mark. Manley mistakenly believes his earned credit time reduces his sentence, but it does not.

[17] In *Boyd v. Broglin*, our supreme court discussed the impact of credit time on a defendant's sentence. The court stated that credit time is a statutory reward for good behavior and is earned by felons toward release on parole, not toward reduction of the felon's fixed term of imprisonment or date of discharge from the felon's sentence. 519 N.E.2d 541, 542 (Ind. 1988). "In other words, credit time operates to advance a defendant's release date from prison but does *not*

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[4] Manley also asks this court to "address the proper procedures for . . . appointment of counsel in civil cases" because, according to Manley, "his request for counsel [in the instant matter] was not addressed and he was forced to wait a month before the trial court even order[ed] a return to be filed." Brief of the Appellant at 9. However, we find that Manley has failed to provide a cogent argument for this matter. Therefore, he has waived this issue for our review. *See* Ind. Appellate Rule 46(A)(8)(a) (each issue presented by appellant must be "supported by cogent reasoning . . . [and] supported by citations to authorities [and] statutes[.]"); *see also Waters v. State*, 65 N.E.3d 613, 618 n.2 (Ind. Ct. App. 2016) (party waives issue by not developing a cogent argument or providing adequate citation to authority and portions of the record).

reduce the parolee's overall length of sentence." *Garrison v. Sevier*, 165 N.E.3d 996, 1000 (Ind. Ct. App. 2021) (citing *Miller v. Walker*, 655 N.E.2d 47, 48 n.3 (Ind. 1995)), *trans. denied*. In *Boyd*, our supreme court noted that "[i]f credit time acted as a diminution of the sentence, there could be no parole period as created by Ind. Code [section] 35-50-6-1." 519 N.E.2d at 543. And "[o]nce a prisoner had served his sentence minus credit time, the sentence would be discharged and the state would have no hold over the prisoner." *Id.* at 543.

[18] And our legislature has clearly distinguished between those who are discharged from their sentence and those who are released to parole. *Id.* Thus, credit time must be interpreted merely as a means to obtain an early release to parole; otherwise, the concept of parole would be rendered meaningless. *Id.* Simply put, earned credit time does not reduce a parolee's sentence for purposes of parole. *Garrison*, 165 N.E.3d at 998 (citing Ind. Code § 35-50-6-1(a), -(b)). And while credit time can get a defendant out of prison in fewer months or years than his actual sentence, if he violates his parole during the parole period, the balance of the actual sentence still remains to be served.

[19] In the instant case, the nature of Manley's conviction dictated the length of his parole. Because Manley had been convicted of child molesting, he was a "sex offender" as defined in Indiana Code section 11-8-8-4.5(a)(3),[5] and he could be placed on parole for up to ten years. *See* Ind. Code § 35-50-6-1(d) (1994). And

[5] Indiana Code section 11-8-8-4.5(a)(3) provides, in relevant part, "'sex offender' means a person convicted of . . . [c]hild molesting . . . ."

"[a] defendant on parole remains on parole until his statutory parole time ends or until the defendant serves, day-for-day, his entire sentence without applying credit time." *Garrison*, 165 N.E.3d at 1000 (citing Ind. Code § 35-50-6-1(b); Ind. Code § 11-13-3-5(a)(2) ("A person released on parole from a determinant term of imprisonment remains on parole until the determinant term expires, except that the parole board may discharge the person from that term any time after that person's release on parole")).

[20] When Manley was originally released from prison, he had not served, day-for-day, his entire forty-year sentence. Thus, when he violated the conditions of his parole, the Indiana Parole Board had the authority to revoke his parole and return him to prison to serve the remainder of his forty-year fixed sentence. *See id.* (citing Ind. Code § 35-50-6-1(c)). And once his parole was revoked, it was well within the Parole Board's authority to require Manley to serve in prison the credit time he received which had triggered his early release from prison and his placement on parole. *See id.* (an offender "whose parole is revoked shall be imprisoned for all or part of the remainder of the person's fixed term").

[21] Therefore, Manley was not deprived of earned credit time. *See Boyd*, 519 N.E.2d at 543 (stating prisoner is not deprived of earned credit time when placed on parole).[6] And his right to due process under the Fourteenth

[6] To the extent that Manley claims that *Boyd v. Broglin*, 519 N.E.2d 541 (Ind. 1988), has been superseded by "changes in the law[,]" is "nonsensical[,]" and is no longer good law, we note that *Boyd* has not been

Amendment to the United States Constitution was not violated. As the panel in *Garrison* noted, an offender has "already . . . received the benefit" of earned credit time "when he [i]s released early and allowed the grace to serve some of his sentence outside of prison walls." 165 N.E.3d at 1000 (citation omitted).[7]

IV. Parole Release Agreement

[22] Next, Manley challenges the two forms he was required to sign upon his release to parole that contained the conditions of his parole, that is, the Conditional Parole Release Agreement and the Parole Stipulations for Sex Offenders (hereinafter, referred to together as "Conditions of Parole"). Specifically,

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overruled and is still good law. Br. of the Appellant at 29, 30. Regarding the relationship between credit time and parole, the *Boyd* court explained:

> [c]redit time is a statutory reward for a lack of conduct that is in violation of institutional rules. It is earned toward release on parole for felons, and does not diminish the fixed term or affect the date on which a felony offender will be discharged. . . . A felon serving a sentence which was imposed under Ind. Code § 35-50-1-1 *et seq.* is released on parole . . . after service of his fixed term less the credit time earned with respect to that term. . . . A felon sentenced under Ind. Code § 35-50-1-1 *et seq.* is on parole until the expiration of his fixed term [or] until discharged by action of the Indiana Parole Board, . . . unless the Indiana Parole Board revokes the parole. . . . [T]he legislative intent is clear that credit time is applied only toward the date of release on parole for felons and does not diminish the fixed term.

519 N.E.2d at 542-43.

[7] Manley also raises additional arguments that we find unavailing. First, he argues Respondents failed to submit fully executed copies of the forms that listed the conditions of Manley's parole, thus failing to establish that Respondents had the "legal authority for [his] restraint." Br. of the Appellant at 34. However, Manley's argument fails as he included in his appendix a fully executed copy of his Parole Stipulations for Sex Offenders form that contains his and Walker's signatures. *See* Appellant's App., Vol. 2 at 59-62. Furthermore, in Indiana it is well-settled that an offender who does not sign his or her parole paperwork is still bound by the conditions of parole. *Page v. State*, 517 N.E.2d 427, 430 (Ind. Ct. App. 1988), *trans. denied*.

Second, Manley raises an equal protection claim, arguing that he has been subjected to "purposeful discrimination" because, unlike an offender released to probation, Manley, a parolee, cannot apply earned educational credit to reduce his overall sentence. Br. of the Appellant at 27. He also claims Indiana Code section 35-50-6-1 is unconstitutional. However, Manley has waived these claims for failure to make a cogent argument. *See* Ind. Appellate Rule 46(A)(8)(a). While Manley cites to numerous statutes, he fails to explain how they support his claims.

Manley argues the Conditions of Parole amounted to an unconscionable contract because the terms contained therein were not negotiated; imposing on Manley the parole conditions contained in the Conditions of Parole that were not in effect at the time he committed his offenses amounted to a violation of ex post facto laws; it was improper to impose on Manley certain parole conditions that are listed in the Conditions of Parole; and the parole conditions listed in the Conditions of Parole violate the Indiana Administrative Rules and Procedures Act. We address each argument in turn.

A. Negotiating Conditions of Parole

[23] Manley argues the Conditions of Parole amounted to a contract that must "comport with Indiana Contract Law." Br. of Appellant at 35. Therefore, according to Manley, because he was not allowed to negotiate the conditions of his parole under the "contract[]" and because there was "no free bargaining involved[,]" the parole "contract[]" was unconscionable. *Id.* at 36. Manley also argues that the "contract terms and definitions [contained in the Conditions of Parole] are so overbroad, vague, and arbitrary, that by their very nature they are opposed to the successful reintegration of [Manley] into society as a constructive individual." *Id.* at 37.

[24] In *Harris v. State*, a panel of this court provided an overview of parole, stating,

> In Indiana, a prisoner is released on parole only upon his or her agreement to certain conditions. A parole agreement is a contract between the prisoner and the State and may be subject to certain conditions imposed at the time of the granting of parole.

> Accordingly, where conditions have been imposed, the parolee is bound by such conditions.

836 N.E.2d 267, 272-73 (Ind. Ct. App. 2005) (internal citations omitted), *trans. denied*. "Generally speaking, the [Indiana Parole] Board has the power to determine whether prisoners serving an indeterminate sentence should be released on parole and, if so, under what conditions." *Id.* at 273 (footnote and citation omitted). The conditions must be reasonably related to the parolee's successful reintegration into the community and not unduly restrictive of a fundamental right. *Id.* And if the Board releases a prisoner on parole, the parolee must be given a written statement of the conditions of his parole. *Id.* (citing Ind. Code § 11-13-3-4(c)).[8]

[25] However, we find no support for Manley's proposition that he should have been allowed to negotiate the terms and conditions of his parole. The grant of parole is within the Board's power, and the Board may place restrictions on a parolee's liberty intended to effectuate the parolee's successful reintegration into society. *See id.* And we are not persuaded that the Conditions of Parole "are so overbroad, vague, and arbitrary" that they fail to achieve the Board's regulatory goals in the least restrictive manner. Br. of the Appellant at 37. Thus, Manley's claims must fail.

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[8] As we stated in footnote 7 herein, the parolee's signature is not a prerequisite to the enforceability of the parole agreement where the parolee was advised of the terms and received the benefits of the release agreement. *Harris*, 836 N.E.2d at 273.

B. Ex Post Facto Laws Violation

[26] Manley next claims that only parole conditions in effect at the time he committed his offenses may be imposed upon him and that imposing parole conditions that were not in effect at the time he committed his offenses violates the constitutional prohibitions of ex post facto laws. We disagree.

[27] Both the federal and state constitutions prohibit ex post facto laws. U.S. CONST. art. I, § 10; Ind. CONST. art. 1, § 24. An ex post facto law imposes a punishment for an act that was not punishable at the time it was committed or imposes additional punishment to that then prescribed. *Ramon v. State*, 888 N.E.2d 244, 251 (Ind. Ct. App. 2008). The focus of the ex post facto inquiry is not on whether a change in the law causes a disadvantage; rather, we must determine whether the change increases the penalty by which a crime is punishable or alters the definition of criminal conduct. *Id.* Analysis of alleged violations is the same under both constitutional provisions. *Upton v. State*, 904 N.E.2d 700, 705 (Ind. Ct. App. 2009), *trans. denied*.

[28] It is well-established that the Indiana Parole Board is allowed to impose conditions that are "reasonably related to the parolee's successful reintegration into the community[.]" Ind. Code § 11-13-3-4(b). And that subsection was in place when Manley was convicted in 1998. Furthermore, the Parole Board's authority to impose the Conditions of Parole is not limited by the date Manley committed his offenses, but rather is limited by the specific conditions' ability to help reintegrate him into society. *See* Ind. Code § 11-13-3-4(b); *see also Patrick v.*

Butts, 12 N.E.3d 270, 271-72 (Ind. Ct. App. 2014) (holding condition that parolee participate in a sex offender program did not violate the ex post facto clause; parole board's authority to impose conditions on parole was not limited by the date on which the sex offender program was created, but instead by the program's ability to help reintegrate the parolee into society). As such, the imposition of the Conditions of Parole does not violate the prohibition against ex post facto laws.

C. Improper Parole Conditions

[29] Next, Manley contends that certain conditions imposed on him that are listed in the Conditions of Parole – that is, conditions that prevented him from using the Internet, accessing pornography, possessing an electronic device, and deleting emails; required him to attend sexual education and awareness class; and placed him on home confinement for eight hours each day – "violate [his] fundamental rights." Br. of the Appellant at 40.

[30] We note, however, that Manley, for all intents and purposes, raises this argument for the first time on appeal. The first time Manley mentions the conditions he now challenges was in his Motion for Emergency Order of Protection, filed on May 2, 2022. He did not raise this argument in his Second Habeas Petition or his memorandum in support thereof. And he did not provide a cogent argument for the issue in his Motion for Emergency Order of Protection. As such, Manley has waived this issue, and we will not address it. *See Mid-States Gen. & Mech. Contracting Corp. v. Town of Goodland*, 811 N.E.2d 425, 436 n.2 (Ind. Ct. App. 2004) (explaining that "[a]n appellant who presents

an issue for the first time on appeal waives the issue for purposes of appellate review").

D. Indiana Administrative Rules and Procedures Act

[31] Finally, Manley contends the Conditions of Parole violate the Indiana Administrative Rules and Procedures Act ("ARPA"). Specifically, he argues the Conditions of Parole were not properly promulgated by the Indiana Parole Board pursuant to the ARPA, as codified under Indiana Code chapter 4-22-2. According to Manley, before the Indiana Parole Board could adopt the conditions listed in his Conditions of Parole, the ARPA required the Parole Board to publish notice of parole conditions, hold a public hearing, allow for public comment, submit a final version to the Attorney General of Indiana for review and the Governor of Indiana for approval, and then submit the approved version to the Indiana Secretary of State for publication in the Indiana Administrative Code. Because the Parole Board did not follow the procedures of the ARPA with regard to the Conditions of Parole, Manley believes that none of the Conditions of Parole "applicable to sex offenders" were properly promulgated, and the conditions are "therefore invalid and without the force of law." Br. of the Appellant at 52. We cannot agree.

[32] An administrative agency must comply with the rulemaking procedures outlined in the ARPA *only* if the agency is promulgating a rule. *Villegas v. Silverman*, 832 N.E.2d 598, 609 (Ind. Ct. App. 2005). Here, the Parole Board did no such thing. The conditions listed in the Conditions of Parole are codified under Indiana Code section 11-13-3-4(g)(2), which was enacted by our

legislature. And it is that Code provision that governs the conditions of parole for parolees and mandates certain conditions be assigned for sex offenders – the very same conditions listed in Manley's Conditions of Parole. *See* Ind. Code § 11-13-3-4(g)(2).[9] As the Indiana Parole Board was not promulgating rules when it imposed the Conditions of Parole on Manley, but was instead applying conditions mandated by statute, the Board was not required to proceed according to ARPA. Manley's arguments to the contrary must fail.

Conclusion

[33] We conclude that Respondents properly filed a response to Manley's Second Habeas Petition, Manley was not deprived of credit time, Manley was not allowed to negotiate the conditions of his parole, the ex post facto law prohibition was not violated, Manley waived his claim regarding the imposition of certain parole conditions, and the Parole Board was not required to proceed under the ARPA when it imposed parole conditions on Manley. Therefore, the trial court did not err in denying Manley's Second Habeas Petition. The judgment of the trial court is affirmed.

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[9] Indiana Code section 11-13-3-4 also lays out other conditions that *may* be assigned by the Parole Board. *See generally* Ind. Code § 11-13-3-4. The statute also provides that "[t]he parole board may also adopt, under IC 4-22-2, *additional conditions* to remaining on parole and require a parolee to satisfy one (1) or more of these conditions." Ind. Code § 11-13-3-4(b) (emphasis added). However, "[t]hese conditions must be reasonably related to the parolee's successful reintegration into the community and not unduly restrictive of a fundamental right." *Id.*

[34] Affirmed.

Mathias, J., and Foley, J., concur.