STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1850

State of Minnesota,
Respondent,

vs.

Henry Joseph Nabors,
Appellant.

Filed September 16, 2008
Affirmed
Worke, Judge

Olmsted County District Court
File Nos. CR-06-8265, CR-06-9206

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Mark A. Ostrem, Olmsted County Attorney, Julie L. Germann, Assistant County Attorney, 151 S.E. Fourth Street, Rochester, MN 55904 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Cathryn Young Middlebrook, Assistant Public Defender, Ngoc Nguyen, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Peterson, Presiding Judge; Klaphake, Judge; and Worke, Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Appellant argues that the district court abused its discretion by revoking his probation because the violations were his first, they were technical in nature, and there were sanctions short of imprisonment available. We affirm.

D E C I S I O N

A district court has broad discretion in determining if sufficient evidence exists to revoke probation. *State v. Austin*, 295 N.W.2d 246, 249 (Minn. 1980). To revoke probation a district court must find: (1) a specific condition of probation was violated; (2) the violation was intentional or inexcusable; and (3) given the nature of the violation and the underlying offense, the policy favoring probation is outweighed by the need for confinement. *Id.* at 250. A district court must make specific findings because "it is not the role of appellate courts to scour the record to determine if sufficient evidence exists to support the district court's revocation." *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005).

Appellant Henry Joseph Nabors does not argue that the district court failed to make the required findings but, rather, argues that the district court's decision to revoke his probation was more reflexive than reasoned. Appellant first argues that his probation should not have been revoked because these were his first probation violations and they were technical in nature. Appellant was charged with felony domestic assault and disorderly conduct. Approximately one month later, appellant was charged with felony domestic assault, third-degree assault, and violation of a domestic abuse no contact order.

Appellant pleaded guilty to felony domestic assault and third-degree assault, and the state dismissed the remaining counts. The district court sentenced appellant to 18 months in prison for the felony domestic assault, and 21 months in prison to run concurrent for the third-degree assault. The district court stayed execution of the sentences and placed appellant on probation. Approximately one month later, appellant's probation officer (PO) filed a probation-violation report, indicating that appellant violated his probation by (1) using alcohol, (2) failing to inform his PO of an address change, and (3) failing to cooperate with his PO. These may have been his first violations, but appellant had been on probation for less than one month and had already violated his probation in three different ways. And in this case, the violations were more than mere technical violations.

The first two violations are connected because appellant was "kicked out" of the Dorothy Day House because he used alcohol and went to detox. The district court found that the alcohol use was a major violation. The court also found that appellant has an extensive history of offenses that escalated in severity through the years and were committed when appellant was under the influence of alcohol or a controlled substance. The domestic-assault and third-degree assault convictions were committed when appellant was under the influence of alcohol. The court found that the community is not safe when appellant is under the influence of alcohol. Thus, appellant's use of alcohol was more than a technical violation. The third violation was appellant's failure to cooperate with his PO. Prior to his violation hearing, appellant's PO went to talk to him at the detention center, and he failed to cooperate with her, called her names, and swore

at her. This is also more than a technical violation because appellant cannot succeed on probation if he is incapable of cooperating with his PO.

Appellant next argues that his probation should not have been revoked because there were other options available short of imprisonment. Appellant contends that the district court could have sentenced him to 60 days in jail and ordered him to enter a treatment center. In his pro se submission to this court, appellant suggests that the district court revoked his probation because his PO and the court were prejudiced against him. The record shows that the district court believed that appellant would not succeed on probation. The court stated that if appellant was allowed to remain on probation he would be back in front of the district court "within less than 30 days." Thus, the district court did not believe that an option short of imprisonment was available to appellant. Further, appellant's PO testified that appellant had exhausted services for chemical-dependency treatment. Therefore, ordering appellant to enter a treatment program would be futile for at least two reasons. First, appellant was ordered to enter a chemical-dependency treatment program as part of his probation, which the record shows, was not successful, because he found himself back in detox. Second, as the PO testified, appellant had been to seven or eight chemical-dependency treatment programs and had been to detox over 65 times over the span of several years. The PO testified that appellant had exhausted all of the chemical-dependency treatment programming available to him.

It is also evident from the record that appellant is unwilling or unable to cooperate with his PO and that he would not be successful on probation. When appellant asked the

district court if he deserved another chance on probation, the court told appellant that he did not deserve another chance on probation because he would not succeed. To that appellant replied, "f**k you and the b***h [his PO]." When the district court told appellant to sit down, appellant replied: "You're a b***h." The court then stated, "you [] proved what I just concluded is absolutely true." Therefore, the district court did not abuse its discretion by refusing to impose a sanction short of imprisonment and by revoking appellant's probation.

Affirmed.