STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2449

State of Minnesota,
Respondent,

vs.

John Lewis Davis,
Appellant.

Filed December 2, 2008
Affirmed
Larkin, Judge

Olmsted County District Court
File No. CR-06-7782

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

Mark A. Ostrem, Olmsted County Attorney, Katherine M. Wallace, Assistant County Attorney, 151 SE Fourth Street, Rochester, MN 55904 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Michael W. Kunkel, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Hudson, Presiding Judge; Larkin, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

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

LARKIN, Judge

This appeal arises from the district court's revocation of appellant's probation in three separate cases. After contested probation revocation proceedings, the district court revoked appellant's probation based on its conclusions that (1) appellant's probation was conditioned upon appellant remaining law abiding and having no contact with the victim of a prior offense; (2) the state proved by clear and convincing evidence that appellant intentionally and inexcusably violated the terms of his probation by failing to remain law abiding and by contacting a victim of a prior offense; (3) appellant is a threat to public safety; and (4) the need for confinement outweighed the policies favoring probation. Appellant challenges the district court's conclusions that appellant is a threat to public safety and that the need for confinement outweighed the policies favoring probation. We affirm.

D E C I S I O N

"The trial court has broad discretion in determining if there is sufficient evidence to revoke probation and should be reversed only if there is a clear abuse of that discretion." *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980); *see also State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005). Before the district court may revoke a defendant's probation and execute a stayed sentence, the district court "must (1) designate the specific condition or conditions that were violated; (2) find that the violation was intentional or inexcusable; and (3) find that the need for confinement

outweighs the policies favoring probation." *Modtland*, 695 N.W.2d at 606 (quoting *Austin*, 295 N.W.2d at 250).

"When determining if revocation is appropriate, courts must balance the probationer's interest in freedom and the state's interest in insuring his rehabilitation and the public safety, and base their decisions on sound judgment and not just their will." *Id.* at 606-07 (citations and quotations omitted). The decision to revoke cannot be "a reflexive reaction to an accumulation of technical violations" but, rather, requires a showing that the "offender's behavior demonstrates that he or she cannot be counted on to avoid antisocial activity." *Austin*, 295 N.W.2d at 251 (quotation omitted). To accomplish this task, a district court should consider whether: "(i) confinement is necessary to protect the public from further criminal activity by the offender; or (ii) the offender is in need of correctional treatment which can most effectively be provided if he is confined; or (iii) it would unduly depreciate the seriousness of the violation if probation were not revoked." *Id.* District courts are instructed to make "fact-specific records setting forth their reasons for revoking probation." *Modtland*, 695 N.W.2d at 608.

The district court did not expressly discuss the considerations set forth above.[1] But the district court noted that appellant had a pattern of violating probationary

[1] These considerations are encouraged but not mandated. *Austin*, 295 N.W.2d at 251 (noting district courts "should refer" to the considerations).

conditions and the law, particularly no-contact orders. Obviously, no-contact orders exist to protect the public. The district court further noted that appellant's most recent violation occurred shortly after sentencing and resulted in a new felony charge for violation of a restraining order. Furthermore, the district court concluded that appellant's statements and behavior indicated that he could not abide by the terms of probation and the law as he sought to address family issues. Finally, the district court cited the results of appellant's court-ordered psychological evaluation that indicated that appellant was not amenable to treatment specific to appellant's unlawful behavior. These were reasonable grounds for the district court to conclude that the need for confinement outweighed the policies favoring probation because appellant's confinement was necessary to protect the public from further criminal activity.[2]

Appellant argues that because intermediate sanctions and previously unutilized treatment opportunities were available as an alternative to revocation, confinement was unnecessary to protect the public. But we cannot find that the district court abused its broad discretion. The district court conveyed its substantive reasons for revocation, and

[2] The district court stated its substantive reasons for revocation on the record. "The 'written findings' requirement is satisfied by the district court stating its findings and reasons on the record, which, when reduced to a transcript, is sufficient to permit review." *Modtland*, 695 N.W.2d at 608 n.4 (citing *Pearson v. State*, 308 Minn. 287, 292, 241 N.W.2d 490, 493 (1976)).

its reasons are fact-specific and supported by sufficient evidence. Accordingly, we hold that the district court did not abuse its discretion in revoking appellant's probation.

Affirmed.

Dated: _____

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The Honorable Michelle A. Larkin
Minnesota Court of Appeals