STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0655

State of Minnesota,
Respondent,

vs.

Matthew Perkins,
Appellant.

Filed February 17, 2009
Affirmed
Stauber, Judge

Ramsey County District Court
File No. K906768

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

Susan Gaertner, Ramsey County Attorney, Mitchell L. Rothman, Assistant County Attorney, Suite 315, 50 West Kellogg Boulevard, St. Paul, MN 55102 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, James R. Peterson, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Stauber, Presiding Judge; Peterson, Judge; and

Shumaker, Judge.

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

STAUBER, Judge

Appellant challenges the revocation of his probation, arguing that clear and convincing evidence in the record failed to show that the violation was intentional or inexcusable and that the need for confinement outweighed the policies favoring probation. We affirm.

FACTS

In October 2002, appellant Matthew Perkins was charged with aggravated robbery in the first degree. Appellant pleaded guilty to the charged offense as an extended jurisdiction juvenile (EJJ), and received a stayed adult sentence of 52 months. In February 2006, a probation revocation hearing was held on allegations that appellant violated the terms of his probation by failing to remain law abiding. The report alleged that appellant recently pled guilty to simple robbery in Washington County. Appellant admitted the violation, and the district court found that this was appellant's fourth probation violation. The district court then revoked appellant's EJJ probation and sentenced appellant to 52 months in prison. But the court found that the "policies favoring probation outweigh the need for confinement in adult prison." Thus, the court stayed appellant's sentence and placed him on probation for 20 years.

On March 15, 2006, appellant admitted to violating the terms of his probation by leaving or never reporting to two treatment programs and by failing to maintain contact with his probation agent. The district court continued appellant's stay of execution, but ordered him to serve 365 days in a county workhouse. In December 2007, appellant

again admitted to violating the terms of his probation. Specifically, appellant admitted that in October 2007, he pled guilty to misdemeanor domestic assault. The district court again continued appellant's stay of execution, but ordered him to serve 90 days in a workhouse beginning on January 2, 2008.

Appellant failed to report to the workhouse on January 2, 2008, as required by the district court's order. Appellant was subsequently arrested and brought to court for a probation violation hearing. At the hearing, appellant waived the contested hearing on the matter and admitted the violation. Appellant explained that he misplaced the form containing the date on which he was to report to the workhouse. Appellant claimed that he found the form on January 3, 2008, but when he tried to turn himself in, he was turned away. According to appellant, he then panicked and did not return to turn himself in.

The district court found that appellant's violation was intentional and inexcusable, and that the need for confinement outweighed the policies favoring appellant continuing on probation. The court then executed appellant's 52-month sentence. This appeal followed.

D E C I S I O N

Probation may be revoked if the district court finds upon clear and convincing evidence that probation has been violated. Minn. R. Crim. P. 27.04, subd. 3(3). The district court's findings of fact are accorded great weight and should not be overturned unless clearly erroneous. Minn. R. Civ. P. 52.01. But whether the district court made the findings necessary to revoke probation is a question of law, which this court reviews de novo. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

The supreme court has adopted a three-step analysis that must be completed by a district court before revoking probation. *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). The district court must make written findings that (1) designate the specific condition of probation that has been 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. "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." *Id.* at 608 n.4.

Appellant argues that because he offered a reasonable explanation as to why he failed to report to the workhouse, his failure to turn himself in was a good-faith mistake. Thus appellant argues that there is not clear and convincing evidence in the record to support the district court's finding that appellant's violation was intentional or inexcusable.

For a violation to be excusable there must be "extenuating circumstances." *State v. Johnson*, 679 N.W.2d 169, 177 (Minn. App. 2004). Here, the record reflects that appellant was ordered to report to a county workhouse on January 2, 2008, to serve a 90-day sentence. The record also reflects that appellant failed to report on that date. Although appellant provided an explanation to the court as to why he failed to turn himself in on January 2, 2008, the district court was under no obligation to accept appellant's excuse. Moreover, even if the court believed appellant's excuse, the excuse does not constitute an extenuating circumstance. Accordingly, there is clear and

convincing evidence in the record supporting the finding that appellant's probation violation was inexcusable.

Appellant also contends that the district court abused its discretion in concluding that the need for appellant's imprisonment outweighed the policies favoring his continued probation. In making the third *Austin* finding, "[t]here must be a balancing of the probationer's interest in freedom and the state's interest in insuring his rehabilitation and the public safety." *Austin*, 295 N.W.2d at 250. The district court must consider three policies: (1) whether confinement is necessary to protect the public; (2) whether the offender needs correctional treatment that can best be provided in prison; and (3) whether not revoking probation would depreciate the seriousness of the violation. *Modtland*, 695 N.W.2d at 607. A district court should always remain cognizant of the fact that "the purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed." *Id.* at 606 (quoting *Austin*, 295 N.W.2d at 250).

Here, in revoking appellant's probation, the court stated:

> Well, the problem we have here is that you received a dispositional departure from the sentencing guidelines to start with. This originally called for an executed sentence apparently. And you were placed on EJJ status and you weren't sent to prison and now here you stand before this court on your fourth probation violation after you have already received a significant break at the front end of this case.
>
> It doesn't appear to me that you have taken probation seriously; that the failure to turn yourself in was an additional violation of probation that was intentional and it was inexcusable. It doesn't appear to me that you have done anything to suggest that you are interested in participating in probation supervision. And I find that at this point the need

> for confinement outweighs the policies favoring or continuing you on probation.

Although it appears that the district court did not consider whether confinement was necessary to protect the public, most of appellant's violations were not the type of violations that would cause the district court to be concerned about the public. The district court considered that the need to confine appellant outweighed his interest in freedom in light of the fact that this was appellant's *seventh* probation violation since he was placed on EJJ status. The district court simply could not ignore that appellant was not able to follow through with his probationary responsibilities, and that he did not take his probationary status seriously. Moreover, the presumptive sentence was a 52-month commitment. Appellant was given a break by being put on probation, but he repeatedly failed while on probation. On this record, we cannot conclude that the district court abused its discretion in revoking appellant's probation.

Affirmed.