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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0904**

State of Minnesota,
Respondent,

vs.

Qahir Salaam,
Appellant.

**Filed April 28, 2009
Affirmed
Collins, Judge***

Ramsey County District Court
File No. 62-KX-07-000630

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

Susan Gaertner, Ramsey County Attorney, Mark N. Lystig, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 315, St. Paul, MN 55102 (for respondent)

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

Considered and decided by Stoneburner, Presiding Judge; Shumaker, 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.

UNPUBLISHED OPINION

COLLINS, Judge

Appellant, who received a stayed sentence for his conviction of first-degree aggravated robbery, challenges the revocation of his probation, arguing that the district court abused its discretion by finding that appellant's probation violation was intentional and inexcusable and that the need for confinement outweighs the policies favoring probation. We affirm.

FACTS

Qahir Salaam was convicted upon his plea of guilty to one count of first-degree aggravated robbery. Pursuant to the plea agreement, Salaam was sentenced to 108 months' imprisonment. His sentence was stayed and Salaam was placed on probation. Conditions of probation included one year of probationary jail time and completion of chemical-dependency treatment. After being released from the workhouse, Salaam repeatedly failed to attend scheduled chemical-dependency-treatment sessions. Following a hearing, his probation was revoked, and Salaam appeals.

DECISION

Before revoking a defendant's probation, the district court must (1) designate the specific condition or conditions that the defendant violated; (2) find that the violation was intentional or inexcusable; and (3) find that the need to confine the defendant outweighs the policies favoring probation. *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). The decision to revoke probation rests within the district court's broad discretion and will not

be disturbed absent a clear abuse of that discretion. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

Before the district court, Salaam admitted his violation of probation for failing to attend scheduled sessions and complete chemical-dependency programming. The issues raised in this appeal are whether the district court abused its discretion in finding the violation to be intentional or inexcusable, the second *Austin* factor, and that the need to confine Salaam outweighs the policies favoring probation, the third *Austin* factor.

Intentional or inexcusable

Salaam participated in the first phase of court-ordered chemical-dependency treatment while serving probationary jail time, but on January 17, 2008, four days after being released from the workhouse, Salaam failed to attend the first scheduled session of the next phase of treatment. He likewise failed to attend treatment sessions scheduled on January 22, 24, 29 and 31. Also, Salaam's probation officer had arranged for him to reside at a halfway house, but Salaam failed to complete the intake process; instead, Salaam chose to live elsewhere and resumed drinking.

Although Salaam admits his violation of probation, he attributes his failure to attend sessions and appointments to his wife's illness and the fact that his mother suffered a stroke. And he characterizes the drinking as "a slip." The district court was not persuaded and found the violation to be intentional and inexcusable. While his wife's illness may have explained Salaam's missing a meeting or two, and his mother's stroke may have interfered with his completion of the halfway-house intake process, Salaam failed to attend a single session of the treatment program, did not return to the halfway

house to complete the intake process, and did not contact the treatment program or his probation officer to explain the circumstances. On this record, we see no abuse of discretion in the district court's determination that the second *Austin* factor was satisfied.

Need for confinement outweighs policies favoring probation

Salaam also contends that the district court abused its discretion by finding that the need for confinement outweighs the policies favoring probation. The crux of Salaam's argument is that the district court's decision to revoke his probation was more reflexive than reasoned.

With regard to the third *Austin* factor, the district court must balance 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 decision to revoke probation cannot be "a reflexive reaction to an accumulation of technical violations" but requires a showing that the "offender's behavior demonstrates that he or she cannot be counted on to avoid antisocial activity." *Id.* at 251 (quotation omitted). The district court should bear in mind that "policy considerations may require that probation not be revoked even though the facts may allow it" and 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." *Austin*, 295 N.W.2d at 250-51. However, the district court may consider an individual's prior record when determining whether the individual is, or remains, amenable to probation. *State v. Sejnoha*, 512 N.W.2d 597, 600, *review denied* (Minn. Apr. 21, 1994).

In concluding that the need for confinement outweighs the policies favoring probation, the district court emphasized Salaam's lengthy criminal history, as well as the risks that were initially undertaken by staying Salaam's sentence and placing him on probation. Although the district court stated: "I explained to you that no matter how small of a violation, that if you came back here again I would have to execute the sentence," a thorough review of the record of the revocation hearing and Salaam's criminal history leads us to readily conclude that the district court's decision to revoke Salaam's probation was well reasoned. The revocation was not "a reflexive reaction to an accumulation of technical violations" but rather stemmed from the district court's well-founded conclusion that Salaam was not amenable to probation.

First, the record indicates that at the sentencing hearing, when he was granted probation, Salaam was advised by the district court and the probation officer that in light of his lengthy criminal record it was critical for Salaam to adhere strictly to the conditions of his probation. At the revocation hearing, after Salaam seemingly minimized the significance of his admitted violation, the district court duly emphasized the seriousness of Salaam's underlying crime and the violation, his criminal record, and the warning he had been given regarding the consequences for violating the terms of his probation. For example, after hearing from Salaam, the district court stated: "I understand that you might consider this to be a minor thing. But it's not. I thought I made it clear to you that you could not afford another violation. Any type of violation on this case. And given your record here, I just cannot risk giving you another opportunity

here.” The district also stated that “the public safety risk is too great for me to chance another opportunity here I had hoped that you were going to make it.”

Second, Salaam’s criminal record shows seven prior felony convictions, fourteen misdemeanor or gross-misdemeanor convictions since 1991, and three failures at probation. As such, not only does Salaam have a lengthy criminal history, but he also has a history of not complying with department of corrections orders, both while in custody and on probation, thereby justifying the district court’s “short leash.”

Finally, Salaam concedes that he failed to comply with the requirements of his court-ordered chemical-dependency-treatment program and that he consumed alcohol on at least one occasion. This demonstrates an unwillingness to address a specific behavior—substance abuse—which, unless successfully treated, makes Salaam a continued risk to public safety. On this record, we see no abuse of discretion in the district court’s determination that the third *Austin* factor was satisfied.

Salaam filed a pro se supplemental brief raising no additional issues.

Affirmed.