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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1225**

State of Minnesota,
Respondent,

vs.

Prentice NMN Wheatley,
Appellant.

**Filed July 21, 2009
Affirmed
Collins, Judge***

St. Louis County District Court
File No. 69-K8-03-600793

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

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Considered and decided by Minge, Presiding Judge; Toussaint, Chief 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UNPUBLISHED OPINION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 challenges the revocation of his probation, arguing that the district court erred by finding that he intentionally and inexcusably violated its terms. We affirm.

FACTS

In May 2004, appellant Prentice Wheatley pleaded guilty to one count of first-degree controlled-substance crime (sale), in violation of Minn. Stat. § 152.021, subd. 1(1) (2002). Pursuant to the plea agreement, the district court imposed and stayed a sentence of 122 months' imprisonment and placed Wheatley on probation for 10 years. The terms of Wheatley's probation required him to remain law-abiding; to abstain from drugs, alcohol, or any other mood-altering substance; to submit to random urinalysis testing; and to successfully complete all treatment and aftercare recommendations stemming from a rule 25 chemical-dependency assessment.

In December 2004, the state filed its first probation-violation report against Wheatley. This report alleged that Wheatley had failed to remain law-abiding, as he had been convicted of felony contempt after ignoring a subpoena to testify at a murder trial in which he was a material witness. Although Wheatley admitted the violation, the district court found that it did not justify revocation of his probation.

A second probation-violation report was filed in August 2007. The state alleged that Wheatley had failed to (1) remain law-abiding, based on a then-pending assault charge of which he was later convicted, and (2) abstain from drugs or other mood-altering substances, as he had tested positive for cocaine and other chemicals on multiple

occasions. At a probation-violation hearing in December 2007, Wheatley admitted both of these violations. When asked about how recently he had used drugs, Wheatley responded that he had had a “relapse” due to stress and specifically denied using drugs after August 10, 2007. And although the district court found Wheatley’s violations to be intentional and inexcusable, it also ruled that providing Wheatley with the opportunity to fully rehabilitate himself was in the best interests of public safety. As a corollary, the district court advised Wheatley:

[W]hile I am very concerned about your usage and your failure to report and your failure to take all the [urinalyses] that you’re supposed to take, I’m going to give you a break. One break. I want you to be clear about that. Because if you’re back here, [I am] going to execute your sentence.

The district court reinstated Wheatley’s probation after adding conditions requiring him to: serve 90 days in jail, with the option of work release, followed by 90 days on electronic home monitoring; immediately report as directed for a urinalysis test and submit to random drug testing thereafter; complete another rule 25 assessment and abide by the evaluator’s recommendations; attend Alcoholics Anonymous (AA) meetings twice a week; and attend school full time.

Two days later, the state filed a third probation-violation report based on violations that Wheatley committed within several hours after the hearing. The state alleged that Wheatley had attempted to manipulate, and thereby evade, the urinalysis test by providing a sample of someone else’s urine for testing. Because he became highly uncooperative when confronted about this, the state also alleged that Wheatley had failed to comply with program/institution rules as required by one of the general conditions of

his probation. Finally, the state alleged that Wheatley had failed to abstain from drugs or other mood-altering chemicals because, after he finally provided a sample of his own urine, the urinalysis was positive for cocaine, opiates, and marijuana. Several days before the scheduled probation-violation hearing, the state filed an addendum to the violation report, alleging that Wheatley also had failed to serve the 90 days' jail time or work-release time, failed to satisfy the 90 days' electronic monitoring, failed to verify his completion of the rule 25 assessment, failed to provide proof of his attendance at AA meetings; and failed to turn himself in after an arrest warrant that had been issued.

A contested probation-violation hearing was held in April 2008. Wheatley testified that, shortly after the December 2007 hearing, he had contacted his probation officer in Hennepin County about serving his work-release time but was told that he could not start work release until he dealt with a recently issued warrant in St. Louis County. Wheatley acknowledged that he did nothing toward resolving the warrant until after he was eventually arrested because he wanted to take care of some personal business first. Wheatley also denied the use of drugs after the December 2007 hearing, asserting he "wasn't honest with the Judge about [his] chemical use" at that hearing and had actually used drugs four days earlier. When confronted with statements made during his subsequent rule 25 assessment that he had last used alcohol in January 2008 and cocaine and heroin in February 2008, Wheatley claimed that he also had lied to the evaluator because he wanted to go into treatment. Finally, Wheatley attempted to justify his failure to provide his probation officer with proof of his AA attendance by contending that he could not do so until after the outstanding warrant had been resolved. The district court

concluded that Wheatley was not a credible witness. After finding that Wheatley had intentionally and inexcusably violated the terms of his probation, the district court found that Wheatley's repeated violations warranted revocation and executed his sentence. This appeal followed.

DECISION

Wheatley challenges the revocation of his probation. Before revoking probation, a district court must perform a three-part analysis. *State v. Modtland*, 695 N.W.2d 602, 606 (Minn. 2005). Under that analysis, the district court must first determine (1) whether a specific condition of probation was violated and (2) whether that violation was intentional or inexcusable. *Id.* (citing *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980)). If the district court finds clear and convincing evidence that a violation has occurred and that it was either intentional or inexcusable, the district court also must evaluate whether the need for confinement outweighs the policies favoring probation. *Id.*; see Minn. R. Crim. P. 27.04, subd. 3(3) (permitting probation revocation on finding clear and convincing evidence of probation violation). A district court has broad discretion when determining whether there is sufficient evidence to revoke probation. *Austin*, 295 N.W.2d at 249-50. On appeal, we will not disturb its decision absent a clear abuse of that discretion. *Id.*

Wheatley first disputes the district court's finding that he violated the 90-day jail-time/work-release condition of his probation. After Wheatley's second admitted probation violation, the district court required Wheatley to serve 90 days either in jail or a work-release program as an additional condition of probation. And it is undisputed that

Wheatley did neither. Rather, Wheatley argues that he was “factually precluded” from complying with this condition by an outstanding warrant.

Wheatley claims that he contacted probation authorities in Hennepin County in a timely manner but was informed that he could not begin work release until he resolved an outstanding warrant in St. Louis County. Wheatley admitted that he did nothing toward resolving his outstanding warrant because he wanted to deal with some “personal business” first. And because Wheatley effectively ignored what apparently was a prerequisite to his ability to comply with this condition of his probation, the district court did not abuse its discretion by finding that this violation was intentional and inexcusable.¹

Wheatley next disputes the district court’s finding that he violated the condition of his probation prohibiting his use of alcohol or illegal drugs. In support of this, Wheatley relies on his testimony from the April 2008 probation-violation hearing in which he admitted that he had lied to the district court at the December 2007 probation-violation hearing.

At the December 2007 hearing, Wheatley specifically denied having used drugs after August 10, 2007. The urine sample Wheatley submitted later that afternoon, however, tested positive for cocaine, opiates, and marijuana. When confronted with this inconsistency at the April 2008 hearing, Wheatley admitted that he had lied to the district court because he was afraid and that he had actually used cocaine and marijuana within

¹ While Wheatley focuses on his inability to start work release, he ignores that this condition was framed in the alternative. Thus, even if the outstanding warrant disqualified him for the work-release program “in lieu of” jail, Wheatley could have complied by serving the 90 days in jail.

several days before the December 2007 hearing. Wheatley also admitted that his statements to the rule 25 evaluator that he had used alcohol, cocaine, and heroin after that hearing also were false. In light of Wheatley's dishonesty, the district court specifically found that Wheatley "is not a credible witness in any respect and will say whatever he believes is necessary to get what he wants."

On appeal, Wheatley argues that, because "each statement was just as likely as the other to be untrue," the district court erred by implicitly believing his testimony at the December 2007 hearing that he had been drug free during the preceding four months and his assertions to the rule 25 evaluator that his drug use occurred following that hearing, rather than believing his testimony at the April 2008 hearing that he had lied about the recency of his drug use. However, in light of Wheatley's manifest credibility issues, the district court could reasonably conclude that Wheatley's testimony at the April 2008 hearing was nothing more than a post hoc justification for the urinalysis results. We must defer to the district court's credibility determinations. *State v. Losh*, 694 N.W.2d 98, 102 (Minn. App. 2005). And here, we confidently do so.

Wheatley also disputes the district court's findings that he failed to provide his probation officer with proof that he attended the required AA meetings. Wheatley asserts that he attended those meetings and that the district court should have believed his testimony to this effect. The district court found that Wheatley was not credible as a witness in light of his admitted self-serving dishonesty. Again, we defer to such credibility determinations. *Id.*

In sum, the district court made the explicit findings and performed the analysis required by *Austin* and *Modtland*. Although some of the alleged probation violations, standing alone, may not have compelled revocation, the findings of Wheatley's continued drug use, his inability to remain law-abiding, and his self-serving lies to the district court and rule 25 evaluator are supported in the record and amply justify the district court's exercise of discretion in revoking Wheatley's probation.²

Affirmed.

² Wheatley additionally disputes the district court's findings that he failed to serve the required time on electronic monitoring and to provide proof of his full-time school attendance. Although sufficient evidence may be lacking on these points, the district court's findings would amount at most to harmless error because the other violations are sufficient grounds to revoke Wheatley's probation. *See* Minn. R. Crim. P. 31.01 (requiring appellate courts to disregard errors not affecting substantial rights).