STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1829

State of Minnesota,
Respondent,

vs.

Maurice Hegwood,
Appellant.

Filed July 28, 2009
Affirmed
Halbrooks, Judge

Olmsted County District Court
File No. 55-CR-08-4387

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

Mark A. Ostrem, Olmsted County Attorney, Karen A. Arthurs, Assistant County Attorney, 151 Southeast 4th Street, Rochester, MN 55904 (for respondent)

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

Considered and decided by Halbrooks, Presiding Judge; Lansing, Judge; and Shumaker, Judge.

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

HALBROOKS, Judge

Appellant argues that the district court abused its discretion by revoking his probation when the evidence did not establish that the need for confinement outweighed the policies favoring probation. We affirm.

FACTS

Appellant Maurice Hegwood was charged with two counts of first-degree aggravated robbery, one count of second-degree assault, one count of crime committed for benefit of a gang, one count of second-degree riot, two counts of fifth-degree assault, and one count of disorderly conduct arising out of several incidents that occurred in early May 2007. In June 2007, appellant pleaded guilty to one count of first-degree aggravated robbery in exchange for the dismissal of the other charges. Appellant received an extended-jurisdiction juvenile (EJJ) disposition, with a stayed adult sentence of 48 months. Appellant was placed on probation until his 21st birthday.

On May 2, 2008, the district court revoked appellant's EJJ status. Appellant was placed on adult probation, and his 48-month sentence was again stayed.

On May 29, 2008, a jury convicted appellant of two counts of counterfeiting. A probation-violation report was filed on May 30, alleging three violations of appellant's probation: (1) failure to abstain from mood-altering chemicals, (2) failure to keep his probation agent informed of his current address, and (3) failure to remain law abiding. A June 5, 2008 violation report added two more violations: (4) failure to remain law abiding and (5) failure to obtain or maintain employment. One of the failure-to-remain-law-

abiding violations involved appellant's counterfeiting convictions; the other involved appellant being charged with shoplifting, to which he eventually pleaded guilty.

On June 3, 2008, appellant admitted to violations 1 and 2 and denied violation 3. Appellant admitted to violations 4 and 5 at a June 18, 2008 hearing.

At sentencing, the district court found that appellant was not amenable to probation and that the need for his incarceration outweighed the policies favoring probation. The district court revoked the stay of execution of sentence and committed appellant to the custody of the Commissioner of Corrections for 48 months. On July 24, 2008, the district court summarized appellant's probation violations in a written sentencing order. The district court also found that appellant's probation violations were intentional or inexcusable. This appeal follows.

D E C I S I O N

"The [district] 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). The Minnesota Supreme Court has established a three-step analysis that must be completed by a district court before probation is revoked. *Id.* at 250. The district court must: (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. *Id.* "We give great deference to a district court's findings of fact and will not set them aside unless clearly erroneous." *State v. Evans*, 756 N.W.2d 854, 870 (Minn. 2008).

Only the third *Austin* factor is at issue in this appeal. This third factor is satisfied if

> (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.

Austin, 295 N.W.2d at 251 (quotation omitted). A district court must balance "the probationer's interest in freedom and the state's interest in insuring his rehabilitation and the public safety." *Id.* at 250. "The decision to revoke cannot be a reflexive reaction to an accumulation of technical violations but requires a showing that the offender's behavior demonstrates that he . . . cannot be counted on to avoid antisocial activity." *Id.* at 251 (quotation omitted).

Appellant argues that the district court abused its discretion by revoking his probation. Specifically, appellant contends that (1) the district court should have expected appellant to initially "have more failures than successes on probation"; (2) nothing about appellant's situation had changed since his first set of probation-revocation hearings, except that he had pleaded guilty to the shoplifting charge; and (3) "the system stood back and watched him fail." Appellant's arguments are without merit.

First, appellant cites only the concurring opinion from *State v. Osborne*, 732 N.W.2d 249 (Minn. 2007), to support his contentions. In that case, the supreme court upheld the probation revocation of an appellant (Osborne) who had not received promised probation services. *Id.* at 255-56. Writing in a concurrence, one of the justices

expressed her concern "with revoking probation for a sentence that was imposed with the express understanding that significant probationary services would be needed for Osborne to successfully complete probation but as to where the system simply stood back and watched him fail because he is chemically addicted." *Id.* at 256 (Meyer, J., concurring). We note that the concurrence focused on Osborne's substance abuse; here, appellant concedes that he is not chemically addicted. We also note that the district court thoroughly reviewed the numerous services that had been offered to appellant that he had not taken advantage of; appellant does not contest the district court's findings that he was offered these services.

Second, appellant's argument that nothing about his situation had changed since the first set of probation hearings misses the point that appellant was found to have violated his probation at the first hearing but was given a second chance to improve his compliance. Appellant does not claim to have made any improvement in complying with the conditions of his probation. After appellant continued to violate the conditions of his probation, the district court found that appellant had made no attempt to cooperate with probation, despite "ample opportunity." For example, the district court noted that appellant had failed to do even "something [as] basic as to get an ID."

Third, appellant's assertion that the system "stood back" and watched him fail is contradicted by the district court's thorough review of the extensive services and assistance offered to appellant, who concedes that he has failed to take advantage of any of these opportunities.

We conclude the district court's finding that the need for confinement outweighs the policies favoring probation is supported by sufficient evidence. The district court therefore did not abuse its discretion when it revoked appellant's probation.

Affirmed.