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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2037**

State of Minnesota,
Respondent,

vs.

Brandon James Trepanier,
Appellant.

**Filed September 15, 2009
Affirmed
Stauber, Judge**

Beltrami County District Court
File No. 04CR071350

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

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Marie Wolf, Interim Chief Public Defender, Cathryn Middlebrook, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Klaphake, Presiding Judge; Stauber, Judge; and Harten, Judge.*

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

UNPUBLISHED OPINION

STAUBER, Judge

Appellant argues that the district court abused its discretion when it revoked probation and executed his stayed sentence because the evidence did not establish that his probation violation was intentional or that the need for confinement outweighed the policies favoring probation. We affirm.

FACTS

On October 30, 2007, appellant Brandon James Trepanier pleaded guilty to first-degree burglary. Appellant admitted breaking into a private residence on March 28, 2007, with the intent to steal a firearm. Appellant planned to pawn the firearm and use the proceeds to purchase cocaine. The state recommended that appellant receive a downward dispositional departure that would involve chemical-dependency treatment. The district court adopted the state's sentencing recommendation and imposed a 58-month stayed sentence with 20 years of supervised probation. The conditions of probation included 120 days in jail, a \$1,500 fine, no controlled substance or alcohol use, and completion of chemical-dependency treatment and aftercare.

Appellant subsequently participated in chemical-dependency treatment, but according to his counselor, he "never fully invested himself in the program." Appellant also admitted that he smoked marijuana in the weeks leading up to his incarceration report date. On March 5, 2008, the district court vacated a portion of appellant's probationary jail sentence to allow him to maintain his seasonal employment. In the

event that the start date for his employment was postponed, appellant was ordered to participate in the “sentence-to-serve” program.

On May 14, 2008, appellant’s probation officer filed a report alleging that appellant had violated the conditions of his probation by testing positive for marijuana use and failing to work on the sentence-to-serve crew after his employment call-back date was postponed. Appellant admitted to the violations at a June 2, 2008 hearing. The district court reinstated the remainder of appellant’s probationary jail term but allowed appellant to continue on probation. The court informed appellant that any future violation would result in revocation of probation and execution of the stayed sentence. Five days after the hearing, appellant was arrested for consuming two beers at a party in violation of the conditions of his probation. Appellant admitted to the violation at a subsequent hearing, and, after considering the *Austin* factors, the district court revoked his probation and executed the stayed sentence. This appeal followed.

D E C I S I O N

A district court has broad discretion in determining whether there is sufficient evidence to revoke probation and should be reversed only if there is a clear abuse of discretion. *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). A court’s factual findings are subject to a clearly erroneous standard of review. *State v. Critt*, 554 N.W.2d 93, 95 (Minn. App. 1996), *review denied* (Minn. Nov. 20, 1996). A finding is considered clearly erroneous when it is “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Novack v. Nw. Airlines, Inc.*, 525 N.W.2d 592, 597 (Minn. App. 1995) (quotation omitted).

“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.” *Austin*, 295 N.W.2d at 251 (quotation omitted). “The purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed. There must be a balancing of the probationer’s interest in freedom and the state’s interest in insuring his rehabilitation and the public safety.” *Id.* at 250. Before probation is revoked, a 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 for confinement outweighs the policies favoring probation. *Id.*

Appellant concedes that he violated a condition of his probation, but challenges the sufficiency of the evidence underlying the district court’s findings for the second and third *Austin* factors. With respect to the second factor, appellant argues that the evidence in the record does not support the court’s finding that his violation was intentional. Appellant contends that his consumption of alcohol at a party was a minor, unintentional relapse. But despite appellant’s attempt at minimizing his conduct, the district court’s finding is not clearly erroneous. After his first violation, the district court reminded appellant that he was prohibited from consuming alcohol or controlled substances and warned him that any further violations would result in revocation of his probation. Despite this warning, appellant consciously disregarded the conditions of his probation and the attendant consequences of a second violation by consuming alcohol. Thus, the district court did not err in finding that appellant’s violation was intentional. *See In re*

Welfare of J.K., 641 N.W.2d 617, 621 (Minn. App. 2002) (upholding finding that violations were intentional when offender deliberately and repeatedly refused to comply with probation requirements).

Next, appellant argues that the evidence does not support the finding that the need for confinement outweighs the policies underlying probation. In determining whether the need for confinement outweighs the policies favoring probation, courts 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.” *State v. Modiland*, 695 N.W.2d 602, 607 (Minn. 2005).

The district court found that the need for confinement outweighed the policies favoring probation because (1) appellant had previously demonstrated a willingness to threaten the public safety by breaking into a residence to steal a firearm; (2) treatment in the community had been unsuccessful; and (3) appellant was in need of chemical-dependency treatment in a confined setting that would require him to remain sober for an extended period of time.

In challenging the district court’s finding, appellant emphasizes that he completed chemical-dependency treatment, found employment, has a strong support system, and allegedly no longer uses cocaine. Appellant also claims that the district court had other rehabilitative options, such as additional probationary jail time, electronic home monitoring, and relapse treatment. We agree that the positive factors and alternative

treatment options cited by appellant would have been sufficient to conclude that this factor weighed in favor of continuing probation. But the district court's finding that the need for confinement outweighed the policies favoring probation is supported by the record. It is uncontroverted that appellant has previously threatened public safety in an effort to obtain controlled substances and has been unable to maintain sobriety in the community for any length of time, despite access to inpatient treatment and stern admonitions from the court. Appellant has also demonstrated a general unwillingness to comply with court orders by failing to report for sentence-to-serve. Due to appellant's inability to maintain sobriety and comply with court orders, the district court's conclusion that treatment in a confined setting where appellant would not have access to alcohol or controlled substances or endanger the public is not clearly erroneous. Accordingly, the district court did not abuse its discretion in revoking appellant's probation.

Affirmed.