**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A09-141**

State of Minnesota,
Respondent,

vs.

B. W. J.,
Appellant.

**Filed October 13, 2009**
**Affirmed in part, reversed in part, and remanded**
**Connolly, Judge**

Douglas County District Court
File No. 21-K2-04-000565

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

Christopher D. Karpan, Douglas County Attorney, Douglas County Courthouse, 305 Eighth Avenue West, Alexandria, MN 56308 (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and Connolly, Judge.

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

**CONNOLLY**, Judge

Appellant argues that the district court erred in revoking appellant's probation and executing his 144-month sentence. He further argues the district court erred in imposing a ten-year period of conditional release. Because the district court did not abuse its discretion in revoking his probation, we affirm in part. However, because appellant did not have a "prior offense" as defined by the conditional release statute, we reverse and remand for the imposition of a five-year period of conditional release.

## FACTS

Appellant B.W.J. was adjudicated delinquent and designated an extended jurisdiction juvenile (EJJ) on April 24, 2003, after admitting to one amended count of criminal sexual conduct in the first degree for pressuring his three-year-old niece to perform an act of oral sex on him. Appellant received a stayed adult sentence of 144 months in prison and was placed on probation until his 21st birthday. Probation conditions imposed on appellant included abstaining from the use of alcohol/chemicals; completing a sex offender program; and remaining law abiding. At the time of appellant's adjudication in this case, appellant had been previously adjudicated delinquent and designated EJJ, with a stayed adult sentence, for one count of criminal

sexual conduct in the first degree based on a separate incident involving a different niece.[1]

On April 29, 2004, appellant admitted to violating his probation by using alcohol and marijuana. For these violations, the district court revoked appellant's EJJ status, but gave appellant a downward dispositional departure pursuant to an agreement, placing appellant on probation and staying his sentence of 144 months for a period of 30 years.

As part of his probation, appellant participated in an updated Psychosexual Evaluation by CORE Professional Services, P.A. (CORE) in February of 2006. Based on the assessor's recommendations, appellant again agreed to complete aftercare programming through an adult sex offender treatment program and to an additional condition of not possessing or accessing pornographic material, among other things.

On November 30, 2007, appellant appeared in court for violating the terms of his probation, including inappropriate sexual touching of his former girlfriend. Appellant and his girlfriend had discontinued their intimate relationship, but remained living together at the time of this act. Appellant reported in a group therapy session that he touched his former girlfriend's "breasts and vagina under the clothing, kissing her back and buttocks, and pulling [her] pants down while she was sleeping." Appellant also self-reported that he had continued viewing pornography on the Internet. For these acts, appellant was terminated from outpatient sex offender treatment.

[1] The "second act" occurred after the "first act" involving the three-year-old niece (the underlying offense in this matter), but charges were filed regarding the "second act" before the "first act."

Appellant subsequently agreed to admit two probation violations: failure to abstain from using pornography and failure to complete a treatment program. Additionally, appellant agreed to the imposition of a ten-year conditional release period following a prison commitment. The record indicates that a conditional release period had not been previously imposed in this matter.

A hearing to determine whether appellant's probation should be revoked for these new violations was subsequently held on September 25, 2008. Appellant's probation officer, Chad Christianson, testified that appellant had attended approximately 90% of his aftercare treatment sessions with CORE during the approximate year-and-a-half before the violation report was filed. This aftercare treatment program had followed a psychosexual evaluation and individual sessions with Dr. Michael Nilan for also roughly a year-and-a-half.

Christianson testified that appellant had disclosed the sexual touching to him on November 26, 2007, and that Christianson was present during the November 29, 2007 CORE therapy session in which appellant disclosed the acts to his treatment group. Appellant disclosed that the touching occurred while his former girlfriend was sleeping and he stopped at her direction when she woke up and discovered it. Christianson testified that, based on the nature of the reaction of appellant's girlfriend, appellant "acknowledged that he had done something that was wrong and that he believed illegal at the time."

Christianson further testified that, in a meeting on May 24, 2007, appellant also disclosed that he had viewed pornography on two occasions. Appellant then told

Christianson of additional access to pornography on May 29, 2007. At the conclusion of his testimony, Christianson recommended that appellant's probation be revoked and that appellant complete treatment in a confined setting.

Appellant presented the testimony of Dr. Rick Ascano. Dr. Ascano had met with appellant and was concerned that appellant had not received the proper treatment for his own victimization as a result of childhood sexual abuse. Dr. Ascano also discussed the results of the Clarke Sex History Questionnaire for Males that he used to evaluate appellant. The questionnaire provides the examiner with a numerical value of different paraphilias, a measure of the examinee's "sexual deviant appetite." When the result is below the 50th percentile, the particular item is not a risk factor, i.e. is no longer an issue for the individual. Dr. Ascano testified that appellant fell at the 92.4 percentile for voyeurism; the 84.4 percentile for exposure to pornography; the 88.3 percentile for female child frequency; and the 83.5 percentile for childhood and adolescent experience and sexual abuse. Dr. Ascano summarized these high scores as the result of ineffective treatment.

Notwithstanding these scores, Dr. Ascano testified that appellant was "extremely repentant" regarding the inappropriate touching of his former girlfriend and use of pornography. Dr. Ascano further described the appellant as "highly motivated to be rehabilitated." Based on his assessment of appellant, Dr. Ascano recommended that appellant could be treated on an outpatient basis and that appellant's behavior was the result of ineffective treatment.

Dr. Ascano opined that appellant's personal issues had not been adequately addressed because, most likely, appellant had not been treated by a traumatologist. As to the therapy appellant had received to date, Dr. Ascano believed appellant had undergone "insight orientated therapy," consisting primarily of talking. Dr. Ascano testified that research has shown this type of therapy is not effective. Rather, appellant needed mindfulness cognitive behavioral therapy to address his own trauma from past sexual abuse. Dr. Ascano stated that Lakeland Medical Health Center in Fergus Falls has a specialist experienced in traumatology and that he was in the process of recruiting a second specialist.[2]

When asked to reconcile appellant's high paraphilia scores with his opinion that appellant is a low risk to recidivate, Dr. Ascano testified:

> Right now at this point in time he is able to modulate his sexual impulsivity. If those paraphilias, with those high numbers, is [sic] not adequately treated, eventually he will act out his sexual appetite. That's why he needs to receive appropriate rehabilitation intervention.

The district court continued the matter to consider Dr. Ascano's testimony before ruling on whether appellant's probation should be revoked.

The district court subsequently found that in viewing Internet pornography; failing to complete the sex offender treatment program; and inappropriately touching his former girlfriend, appellant had violated the conditions of his probation to (1) not commit any new or similar offenses; (2) remain law abiding; (3) complete an aftercare program; (4) be truthful with his probation agent; and (5) refrain from using pornography. The

[2] Evidence was later presented that such traumatologists were not available in state correctional facilities.

district court also found that these behaviors were "inexcusable or intentional." The district court further stated that these were not "technical violations," but "significant in the context of the defendant's underlying criminal behavior."

As to whether the need for incarceration was outweighed by the preference for probation, the district court cited the need to protect the public based on Dr. Ascano's concern regarding appellant's activities if appellant did not enter into treatment within 24 hours after release and that Dr. Ascano considered appellant to be at a high risk for reoffense until he receives the "appropriate" treatment. Moreover, based on the amount of individual and group therapy appellant had already received, the district court found it would diminish the seriousness of appellant's violations if his probation were not revoked. Appellant's probation was revoked and appellant was sentenced to the commissioner of corrections for 144 months, with credit for time served, followed by a ten-year term of conditional release. This appeal follows.

## D E C I S I O N

### I. The district court did not abuse its discretion in revoking appellant's probation.

"The trial 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); *see also State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005). Before the district court may revoke a defendant's probation and execute a stayed sentence, the district court must perform a three-step analysis using the *Austin* factors. *State v. Osborne*, 732 N.W.2d 249, 253

(Minn. 2007). The district court "must 1) designate the specific condition or conditions that were violated; 2) find that the violation was intentional or inexcusable; and 3) find that the need for confinement outweighs the policies favoring probation." *Austin*, 295 N.W.2d at 250.

Additionally, under *Modtland*, "[w]hen determining if revocation is appropriate, courts must balance the probationer's interest in freedom and the state's interest in insuring his rehabilitation and the public safety, and base their decisions on sound judgment and not just their will." 695 N.W.2d at 606-07 (quotations omitted). The decision to revoke cannot be "a reflexive reaction to an accumulation of technical violations" but rather 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). To accomplish this task, a district court 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.

*Id*. District courts are instructed to make "fact-specific records setting forth their reasons for revoking probation." *Modtland*, 695 N.W.2d at 608.

When revoking appellant's probation, the district court went through each of the *Austin* factors, articulating its findings on the record. As for appellant's violations, the district court stated there were three things it looked at "in particular": viewing of Internet pornography; the failure to complete the treatment program; and the sexually

inappropriate behavior with appellant's former girlfriend. In light of these activities, the district court found appellant had violated the terms of his probation, placing the substance of the violations on the record:

> The three allegations in the Probation Violation Report—I guess there's four listed in the original report or more—but the substance of the violations should be noted for the record. Those being that there were new or similar offenses; that the defendant failed to remain law abiding and failed to complete the aftercare programming, in this case that being CORE; failed to be truthful with his agent; and observed pornography.

The district court next found that appellant's actions were "inexcusable or intentional." While acknowledging that appellant had self-reported some of his behavior, the district court stated that such reporting "does not belie the fact that they were intentional or inexcusable acts with his full knowledge of his conditions of probation." Finding that these were more than "technical violations," the district court noted the violations "are significant in the context of the defendant's underlying criminal behavior. Specifically all three have components of sexual either misconduct or the need to treat [appellant's] sexual criminal behavior."

Appellant argues that these violations were the result of inferior treatment under the care of Dr. Nilan and otherwise "inappropriate" treatment through CORE.[3] As a result of this "improper" treatment, appellant asserts he was set up to fail and that his actions were the product of his own victimization for having been sexually abused at a

[3] Appellant also argues the policy reasons concerning the law's more lenient approach to juvenile offenders, particularly when an EJJ designation has been revoked. However, appellant's EJJ designation was revoked over five years ago, in April 2004, and appellant was approximately 23 years old when the violations leading to the revocation of his adult probation (and this appeal) occurred.

young age. Appellant has presented evidence tending to show that appellant's first therapist, Dr. Nilan, had been the subject of fraud investigations and fabricated his credentials.

While the record contains evidence that Dr. Nilan had "treated" appellant, appellant's probation agent at the time expressed difficulty in reaching and communicating with Dr. Nilan and ultimately received documentation concerning completion of treatment six months after his initial inquiry. The record from appellant's April 2004 EJJ revocation hearing also reflects the difficulty appellant's second probation agent had in reaching Dr. Nilan: "I'm not confident that any aftercare has been met, because frankly I don't know where Dr. Nilan is. He frankly has fell [sic] off the face of the earth."

The district court chose to address this argument under the third *Austin* factor, whether the need for confinement outweighs the policies favoring probation, rather than whether appellant's actions were voluntary or excusable. In considering whether the need for confinement outweighs the policies favoring probation, the district court anchored its analysis in a concern for public safety and the risk of diminishing the seriousness of the violations if probation were not revoked.

Acknowledging that appellant's expert testified that appellant would be at a "moderate or lower risk for reoffending," the district court also pointed out that appellant's expert

> would be very concerned about [appellant's] activities if he were not I think he said in treatment 24 hours after his release was his quote as I believe. So until, in Mr. Ascano's, Dr. Ascano's view, until the [appellant] were to

> receive what he believed appropriate treatment, he would be considered high risk.

The district court further found that appellant's history indicated "a significant treatment of individual therapy" and "approximately a year and a half in the CORE program, which is predominantly a group program." In light of the therapy appellant has received; the extensive testimony of Dr. Ascano; and appellant's past history, the district court determined that "there's a need to protect the public from further criminal activity and it would also diminish the seriousness of the violations if probation was not revoked."

We conclude that these findings reflect the considerations set forth in *Modtland* for determining whether revocation is appropriate and balancing the interests of the probationer and the state. *See id*. at 606-07. Before executing appellant's 144-month sentence, the district court found that the need for confinement outweighed the policies favoring probation by its previous discussion of public safety and the seriousness of appellant's violations, satisfying the third *Austin* factor.

"Revocation is justified when there is enough evidence to satisfy the decision-maker that the conduct of the offender does not meet the conditions of his release." *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 27 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006). While appellant's expert recommended a different treatment "modality" than that which could be offered through the department of corrections, it was not an abuse of discretion for the district court to conclude that appellant, who had already received significant amounts of individual and group therapy; who continues to access pornography; and who continues to inappropriately touch others in a sexual manner, is

not amenable to probation. Further, the district court was not compelled to accept Dr. Ascano's recommendation. *See Roy Matson Truck Lines, Inc. v. Michelin Tire Corp.*, 277 N.W.2d 361, 362 (Minn. 1979) ("The trial court, sitting without a jury, is the sole judge of the credibility of witnesses and may accept all or only part of any witness' testimony.").

Additionally, as respondent points out, appellant is not able to support the assertion that "[i]n the probation revocation context, to be intentional or inexcusable, the violation cannot relate to mental health issues or other problems that a defendant cannot control." Appellant cites the unpublished case of *State v. Q.L.S.*, in which one of the district court's findings was that the defendant's "failure to complete the [treatment] program was not the result of intellectual deficiencies or mental health issues." 2008 WL 763239, *3 (Minn. App. Mar. 25, 2008). First, pursuant to Minn. Stat. § 480A.08, subd. 3 (2008), "[u]npublished opinions of the Court of Appeals are not precedential." Second, this finding represents only one of three factual findings the district court made to support the second *Austin* finding, that the defendant's conduct was intentional and inexcusable. 2008 WL 763239 at *3. In finding that failure to complete the treatment program was intentional and inexcusable, the district court also found that the defendant had intentionally used alcohol in violation of the program's rules and had plenty of time to complete the program, having been enrolled for 44 months versus the 14-month average. *Id.*

Appellant also cites *In re the Welfare of J.K.*, 641 N.W.2d 617 (Minn. App. 2002). In that case, the defendant presented evidence to have his probation violations excused on

the grounds of "cultural difficulties." *Id.* at 621. This court upheld the district court's findings that the defendant's behavior was intentional or inexcusable and the subsequent revocation based on the defendant's deliberate and repeated refusal to comply with his probation requirements. *Id.* *J.K.* does not discuss revocation in light of mental health issues.

Because the evidence supports the district court's findings that appellant committed three distinct violations of the terms of his probation; that the violations were intentional; and that there was a need to protect the public from further criminal behavior by appellant as well as to impress upon appellant the seriousness of his violations, the district court did not abuse its discretion in revoking appellant's probation.

## II. The district court erred by imposing a ten-year conditional release period following revocation.

Whether a statute has been properly construed is a question of law subject to de novo review. *State v. Murphy*, 545 N.W.2d 909, 914 (Minn. 1996).

In 2002, a mandatory period of conditional release existed for those convicted of first-degree criminal sexual conduct under Minn. Stat. § 609.342 (2000). Minn. Stat. § 609.109, subd. 7(a) (2000). Under section 609.109, subdivision 7(a),

> [i]f the person was convicted for a violation of section 609.342 . . . the person shall be placed on conditional release for five years, minus the time the person served on supervised release. If the person was convicted for a violation of one of those sections a second or subsequent time, or sentenced under subdivision 6 to a mandatory departure, the person shall be placed on conditional release for ten years, minus the time the person served on supervised release.

Pursuant to subdivision 5,

> a sex conviction is considered a previous sex offense conviction if the person was convicted of a sex offense before the commission of the present offense of conviction. A person has two previous sex offense convictions only if the person was convicted and sentenced for a sex offense committed after the person was earlier convicted and sentenced for a sex offense, both convictions preceded the commission of the present offense of conviction, and 15 years have not elapsed since the person was discharged from the sentence imposed for the second conviction.

Minn. Stat. § 609.109. Imposition of a conditional-release term on the statutorily specified offense is mandatory and not waivable. *Cf. State v. Humes*, 581 N.W.2d 317, 319 (Minn. 1998) (noting that conditional release is mandatory under similar conditional release statute); Minn. Sent. Guidelines cmt. II.E.05 (2001).

Appellant was adjudicated delinquent for admitting to one charge of criminal sexual conduct in the first degree under Minn. Stat. § 609.342, subd. 1(a), on April 24, 2003. Appellant was designated EJJ and his adult sentence of 144 months was stayed until he was 21. The district court did not make any record concerning the potential for conditional release should appellant's adult sentence be executed. Similarly, the district court did not mention conditional release when it later revoked appellant's EJJ designation on April 29, 2004, and placed him on probation. The check-the-box indicators which mention conditional release and a term of five or ten years on the district court's criminal judgment and warrant of commitment form are not marked in any way to indicate a period of conditional release.

Appellant subsequently agreed to a ten-year term of conditional release as part of a plea agreement at a probation revocation hearing on May 15, 2008:

> DEFENSE COUNSEL: Okay. Do you further understand that as part of this agreement the prosecution will be dismissing the Criminal Sexual

Conduct in the Fourth Degree charge that was scheduled to proceed to trial next week?
DEFENDANT: Yes.
DEFENSE COUNSEL: Do you understand that if you wish to proceed to trial on that case you could do that, but by entering this agreement that charge will be dismissed?
DEFENDANT: Yes.
DEFENSE COUNSEL: Do you further understand what the ten-year conditional release period that's been explained to the Court, what that means?
DEFENDANT: Yes, I do.
DEFENSE COUNSEL: Do you understand that that ten-year conditional release period is not currently in effect or in place in the sentence on this file at this time?
DEFENDANT: Yes.
DEFENSE COUNSEL: Do you understand that by voluntarily agreeing to add that, that condition, of the ten-year conditional release period, you are waiving the right that you have to potentially withdraw your plea of guilty and proceed to a trial on the underlying 2004 case?
DEFENDANT: Yes.
DEFENSE COUNSEL: And we've discussed this in detail before we came into court today; is that correct?
DEFENDANT: Yes, we have.
DEFENSE COUNSEL: And specifically you understand that you're waiving the right to proceed in that fashion by seeking to withdraw the plea and go to a trial on the underlying case which arose in 2002?
DEFENDANT: Yes.
DEFENSE COUNSEL: And you're in agreement with the Court imposing the period of ten-year conditional release?
DEFENDANT: Yes.
DEFENSE COUNSEL: And you understand that that would potentially require you to serve an additional ten years in prison if you were to violate that period of ten-year conditional release following a prison commitment?
DEFENDANT: Yes.
DEFENSE COUNSEL: And on that basis do you still wish to go ahead with your admission of the probation violation alleged here today?
DEFENDANT: I do.

Notably, part of the agreement included dismissal of the new fourth-degree criminal sexual conduct charge.

Appellant argues that the district court erred in imposing a ten-year period of conditional release because appellant did not have a qualifying "previous sex offense conviction" under Minn. Stat. § 609.109, subd. 5. Respondent concedes that appellant did not have a qualifying "previous sex offense conviction" and should have been subject to a five-year conditional release period.

Subdivision 5 sets forth the definition of "previous sex offense convictions" for the purposes of determining the conditional release period under subd. 7(a). Minn. Stat. § 609.109, subds. 5, 7(a). "[A] conviction is considered a previous sex offense conviction if the person was convicted of a sex offense before the commission of the present offense of conviction." *Id.* subd. 5. Appellant was previously adjudicated delinquent and designated EJJ for one count of criminal sexual conduct in the first degree on September 16, 2002. While charged and adjudicated before this case, the conduct in the "first" case occurred in June of 2002, whereas the conduct in this present, "second" case occurred in approximately April or May of 2002. Because the conduct underlying this case occurred before the previous conviction, appellant cannot be deemed to have been convicted of a sex offense before "the present offense of conviction" under Minn. Stat. § 609.109, subd. 5. Therefore, it was error for the district court to impose a ten-year period of conditional release and this matter must be reversed and remanded to the district court to change the conditional-release period to five years pursuant to Minn. Stat. § 609.109, subd. 7(a).

Appellant also argues that he was "asked to agree to an illegal term of conditional release" and that his entire term of conditional release should be vacated or appellant

should be allowed to withdraw his plea because the record fails to indicate that appellant was ever informed of the conditional release period until after his sentence was imposed. Appellant relies on a line of cases including *State v. Rhodes*, 675 N.W.2d 323 (Minn. 2004); *State v. Wukawitz*, 662 N.W.2d 517 (Minn. 2003); and *State v. Jumping Eagle*, 620 N.W.2d 42 (Minn. 2000). It is worth quoting at length from *Rhodes* to explain how these cases are read together:

> In a series of seven cases, we have considered issues concerning the addition of the conditional release term after the sentence has already been imposed. *See Wukawitz*, 662 N.W.2d at 523-25 (discussing previous cases). In situations where the addition of the conditional release term would result in a sentence that exceeded the maximum executed sentence agreed to in the plea bargain, we have held that the addition of the conditional release term violates the plea agreement. *See, e.g., State v. Jumping Eagle*, 620 N.W.2d 42, 44 (Minn. 2000). But in each of those cases, the conditional release term was not mentioned at the sentencing hearing or included in the initial sentence. *See, e.g.*, *Wukawitz*, 662 N.W.2d at 529 ("Our holding is limited to those situations where the original sentence did not include conditional release and the imposition of such a term after the fact would violate the plea agreement.").

675 N.W.2d at 326-27. The Minnesota Supreme Court upheld Rhodes' conditional release, despite the fact that the plea petition and the plea hearing were silent on the issue, finding that Rhodes was adequately informed of the conditional release term at the sentencing hearing itself. *Id.* at 325-27. The court opined:

> First, at both the time of his plea and of sentencing, Rhodes was on notice that the conditional release term for sex offenders was mandatory and could not be waived by the district court. The statutory requirement of a conditional release term was added in 1992, years before Rhodes entered his plea. Second, we recognized the mandatory nature of conditional release terms in *State v. Humes*, 581 N.W.2d 317, 319 (Minn. 1998), and *State v. Garcia*, 582 N.W.2d 879, 881 (Minn. 1998). Those decisions were issued on July 9, 1998, 10 months before Rhodes pleaded guilty on May 19, 1999. Third, the postconviction court could infer from Rhodes' failure to

> object to the presentence investigation's recommendation, the state's request at the sentencing hearing and the court's imposition of the sentence, that Rhodes understood from the beginning that the conditional release term would be a mandatory addition to his plea bargain. This third factor materially differentiates this case from *Wukawitz* and the precedent on which it relies.

*Rhodes*, 675 N.W.2d at 327.

From the record, it appears that appellant was not informed of the mandatory conditional release period until his probation violation hearing on May 15, 2008. However, appellant was aware of the conditional release period on May 15 and did not object to imposition of the conditional release period at the subsequent October 20, 2008 hearing in which his probation was ultimately revoked. In fact, appellant agreed to the ten-year conditional release period in exchange for the state's dismissal of a fourth-degree criminal sexual conduct charge. Because appellant utilized the conditional release as a "bargaining chip" for the dismissal of an additional charge, he was on notice and "informed" at the time he admitted the probation violation and his admission was an "intelligent" one. Moreover, he specifically waived his right to withdraw his plea to the original criminal sexual conduct charge and agreed to the imposition of the ten-year conditional-release period. *See Spann v. State*, 704 N.W.2d 486, 491 (Minn. 2005) (noting that courts have allowed criminal defendants to waive constitutional and other rights and will honor a lawful waiver by a defendant).

At the time of appellant's adjudication and EJJ designation in 2002, the statute mandated that a conditional release period be imposed on sexual offenders. As *Humes* and the sentencing guidelines in effect at the time demonstrate, this was a *mandatory*

directive to the court and not waivable. At his probation-revocation hearing, appellant not only acknowledged that the conditional release term had been explained to him, he also expressly waived his right to withdraw his plea.

Under Minn. R. Crim. P. 27.03, subd. 9, "[t]he court at any time may correct a sentence not authorized by law." Because appellant was "informed" enough to use the conditional release period as a bargaining chip for dismissal of an additional criminal sexual conduct charge, he should not be allowed to withdraw his plea because the conditional release period was not imposed at either his original EJJ designation or his later sentencing hearing. Consequently, we reverse and remand the matter to the district court for the imposition of a five-year conditional release term.

**Affirmed in part, reversed in part, and remanded.**