STATE OF MINNESOTA
IN COURT OF APPEALS
A10-405

State of Minnesota,
Respondent,

vs.

Laron Lovell Brown,
Appellant.

Filed December 7, 2010
Affirmed
Peterson, Judge

Hennepin County District Court
File No. 27-CR-07-128115

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Cathryn Middlebrook, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Peterson, Judge; and Hudson, Judge.

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

PETERSON, Judge

In this probation-revocation appeal, appellant argues that because the district court failed to take into account appellant's status as a vulnerable adult and the evidence does

not show that the need for confinement outweighs the policies favoring probation, the district court abused its discretion when it revoked appellant's probation. We affirm.

FACTS

Appellant Laron Lovell Brown pleaded guilty to one count of attempted first-degree criminal sexual conduct. Pursuant to the plea agreement, the district court sentenced appellant to a stayed term of 180 months in prison. Probation conditions included that appellant serve one year in jail, abstain from using alcohol and nonprescribed drugs, submit to random drug testing, complete psychological/psychiatric evaluation and counseling and sex-offender treatment as ordered by court services, take psychiatric medications as prescribed, have no direct or indirect contact with the victim, and comply with geographic restrictions that require appellant to stay out of an area within about a 20-block radius of the victim's residence. Defense counsel noted that appellant had been diagnosed as a vulnerable adult and was taking the medication Thorazine for a mental-health condition and requested that appellant's probation officer take these factors into consideration in determining appropriate treatments for appellant.

On August 14, 2008, appellant met with Probation Officer Rahill. Appellant told Rahill that he understood the geographical-restriction area and that he would have no problem avoiding the victim and her family. Appellant stated that the only nonprescription drug he had ever used was marijuana and that he was taking the prescribed drug Thorazine.

On August 18, Rahill learned that appellant began residing within the restricted area within a few days after sentencing. On August 19, Rahill was informed that

appellant had been seen in the restricted area and had threatened to beat the victim's children. On August 21, Rahill told appellant that he had to move out of the restricted zone, and appellant indicated that he would do so. On August 28, Rahill received a report that appellant had approached and spoken to one of the victim's children.

On September 3, Rahill met with appellant. Appellant denied speaking to the victim's children. Rahill asked appellant about his medications and told him that she wanted to review information about them. Appellant failed to bring the medications or information to his next meeting with Rahill. Appellant denied that there were any issues with his medications, denied using nonprescription drugs, and stated that he checked in weekly with a psychologist.

At a September 18 meeting with Rahill, appellant again failed to bring his medications or information about them. Appellant claimed that his brother had misplaced the papers for the mental-health clinic and, therefore, he could not provide her with the name of the clinic where he had his weekly appointments or the name of his treating psychologist. Appellant claimed that his medication was dispensed on cards, which contained information about the medication, and that he threw away the cards immediately upon receiving the medication.

On September 21, while shopping, one of the victim's children saw appellant in front of a store five blocks from the victim's home. The victim went outside and told appellant that he had to leave because he had to be at least 20 blocks away from her residence. Police were called. A store employee stated to police that he saw appellant in

a car outside the store and heard the conversation between appellant and the victim. Appellant denied having been near the store.

On September 23, Rahill learned from Hennepin County Medical Center that appellant had self-reported that he was taking Thorazine that had been provided to him while in jail and that he had an appointment to be seen there in October 2008.

On September 29, Rahill prepared a probation-violation report. The state requested that appellant's probation be revoked and his 180-month sentence be executed. Appellant admitted violating probation by being in the restricted area on September 21 and by moving into a residence within the restricted area following sentencing. The district court ordered appellant to serve one year of the 180-month sentence. The court stated:

> The record should reflect that my intention is to put you back on probation with all the same conditions restored after you've done a year in jail and I will tolerate zero deviation from the requirements of this probation. And I can assure you that I will keep the case and I will assure you that I will not hesitate the next time around, if there is one, to send you off to 180 months.

After serving a year in jail, appellant submitted to a urinalysis test on November 19, 2009, which came back positive for cocaine. On December 1, 2009, appellant was taken into custody in the restricted area, and Rahill prepared a probation-violation report. Appellant admitted the probation violations, and the district court executed the 180-month sentence. This appeal followed.

D E C I S I O N

When the district court finds that violation of the conditions of probation provides grounds for revocation, it may order execution of a previously stayed sentence. Minn. Stat. § 609.14, subd. 3(2) (2008); Minn. R. Crim. P. 27.04, subd. 3(3)(b) (2009). In revocation proceedings, the state must present clear and convincing evidence that the probationer has violated conditions of probation and that probation should therefore be revoked. Minn. R. Crim P. 27.04, subd. 3(3) (2009). "A 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. Ornelas*, 675 N.W.2d 74, 79 (Minn. 2004).

Before revoking probation, "the [district] court must 1) designate the specific [probation] 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." *State v. Modtland*, 695 N.W.2d 602, 606 (Minn. 2005) (quotation omitted).

The district court stated:

> I do find there is a probation violation because of the cocaine use for violating the restricted area that was clearly set out for you at the time of your sentencing and also clearly set out to you and have another probation violation by going in there and at that time, I gave you another chance and put you in jail for a year. This time I'm not going to do that.
>
> I find the probation violation inexcusable and I find that it would unduly depreciate the seriousness of the offense if there was not a consequence.

Appellant challenges the district court's finding that the need for confinement outweighed the policies favoring probation. This 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." *State v. Austin*, 295 N.W.2d 246, 251 (Minn. 1980). "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 or she cannot be counted on to avoid antisocial activity." *Id.* (quotations omitted).

Appellant argues that "the district court failed to take into account appellant's status as a vulnerable adult and all of appellant's positive attributes and the progress that he had made while on probation." The record does not support appellant's claim that he made progress while on probation. Instead, the record shows that during appellant's entire term of probation, he consistently disregarded important probation conditions. In 2008, he violated probation by residing in and later going to the restricted area. He also failed to provide Rahill with information about his medications or information verifying that he was being treated by a psychologist. After being released from jail in 2009, appellant violated probation by using cocaine and by going to the restricted area.

The district court did not abuse its discretion by revoking probation. *See State v. Hamilton*, 646 N.W.2d 915, 918 (Minn. App. 2002) (stating continued violation of conditions of probation justified revoking probation), *review denied* (Minn. Sept. 25, 2002), *abrogated in part on other grounds*, *Modtland*, 695 N.W.2d at 606; *State v. Theel*,

532 N.W.2d 265, 267 (Minn. App. 1995) (stating a defendant's failure to follow court's order despite repeated warnings indicated that probation was not succeeding and confinement was justified), *review denied* (Minn. July 20, 1995), *abrogated in part on other grounds*, *Modtland*, 695 N.W.2d at 606.

Affirmed.