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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1195**

State of Minnesota,
Respondent,

vs.

M. B.,
Appellant.

**Filed February 8, 2011
Affirmed
Klaphake, Judge**

Hennepin County District Court
File Nos. 27-JV-07-6361, 27-CR-10-19863

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

Michael O. Freeman, Hennepin County Attorney, J. Michael Richardson, Assistant
County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Susan J. Andrews, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

In this appeal involving the disposition of an extended jurisdiction juvenile (EJJ),
appellant M.B. argues that the district court abused its discretion by revoking his

probation and executing his 48-month adult prison sentence, claiming that the state failed to show that the need for his confinement outweighed the policies favoring his remaining on probation. Because the facts were sufficient to support the district court's exercise of its discretion to revoke appellant's probation and impose the adult sentence, we affirm.

FACTS

On May 3, 2010, the district court revoked the probation of appellant, a 20-year-old EJJ who pleaded guilty to first-degree aggravated robbery under Minn. Stat. § 609.245, subd. 1 (2006), for a 2007 offense. The district court imposed a disposition that included a 48-month stayed adult sentence and placement on EJJ probation until the age of 21. From late 2008 through early 2010, appellant repeatedly violated various conditions of his probation, including those related to chemical use, maintaining contact with his probation officer and being truthful with that officer, abiding by curfew and home monitoring, and participating in chemical dependency, psychological and mental health assessments. After four probation violation hearings, each of which encompassed numerous and varied violations, the district court revoked appellant's probation and executed the 48-month sentence.

DECISION

“An EJJ prosecution is a blending of juvenile and adult criminal dispositions that extends jurisdiction over a young person to age twenty-one and permits the court to impose both a juvenile disposition and a criminal sentence.” *State v. J.E.S.*, 763 N.W.2d 64, 67 (Minn. App. 2009) (quotation omitted). The disposition in an EJJ case imposes an adult sentence but stays that sentence “so long as the offender does not violate the

provisions of the juvenile disposition and does not commit a new offense.” *Id.* (quotation omitted).

The district court has discretion to decide whether to revoke probation, and this court will reverse only for an abuse of that discretion. *State v. Osborne*, 732 N.W.2d 249, 253 (Minn. 2007); *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). A juvenile probation violation must be proved by clear and convincing evidence. Minn. R. Juv. Delinq. P. 15.07, subd. 4(D). To revoke EJJ probation, the district court must identify the specific condition that was violated, find that the violation was intentional or inexcusable, and determine whether the need for confinement outweighs the policy favoring probation. *State v. B.Y.*, 659 N.W.2d 763, 768-69 (Minn. 2003); *State v. Modiland*, 695 N.W.2d 602, 605-06 (Minn. 2005) (requiring consideration of three *Austin* factors before probation revocation); *Austin*, 295 N.W.2d at 250.

For a period of about a year and a half, appellant continuously violated various conditions of his probation and demonstrated compliance only when he was in a structured setting. He was unable to either obtain or benefit from mental health, psychological, or chemical dependency assessments or treatment, because he refused to participate in the intake process, attend appointments, or make a true commitment to treatment. He also chafed at complying with the restrictive aspects of his probation, including reporting to his probation officer and complying with curfew or home monitoring. While appellant was not charged with reoffending while on probation, he was required to comply with all conditions of his probation. He consistently and repeatedly failed to do so.

The district court's findings demonstrate that it considered and applied the required *Austin* factors. In revoking appellant's probation, the district court stated:

[Appellant] has violated the terms and conditions of his probation by resisting mental health treatment, not remaining sober and missing meetings with his probation officer. The Court finds that these violations were intentional and not excusable. The Court finds that the need for confinement with the Commissioner of Corrections outweighs the policies favoring [appellant] remaining on probation.

The same district court judge was involved in this case for several years, and a review of the court's prior rulings in the probation violation proceedings shows that it fully considered the probation issues presented in each instance, that it gave appellant repeated opportunities to correct his behavior, and that the progression in appellant's conduct that led to the result here. *See* Minn. R. Juv. Delinq. P. 19.11, subd. 3(E) (requiring district court in juvenile probation revocation proceeding, to "make written findings of fact on all disputed issues including a summary of the evidence relied upon and a statement of the court's reasons for its determinations"); *see also* *B.Y.*, 659 N.W.2d at 772 (stating that "[t]he 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") (quotation omitted)); *Modtland*, 695 N.W.2d at 606-07 (stating that "[t]he purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed") (quotation omitted)). We conclude that the state showed that the need for confinement outweighed the policies favoring appellant's remaining on probation.

Affirmed.