STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1213

State of Minnesota,
Respondent,

vs.

Stacy Michael Dotts,
Appellant.

Filed February 15, 2011
Affirmed
Connolly, Judge

Hennepin County District Court
File No. 27-CR-09-28303

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, Ngoc Nguyen, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Klaphake, Judge; and Halbrooks, Judge.

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

CONNOLLY, Judge

Because there was sufficient evidence in the record to prove that the need for appellant's confinement outweighed the policies favoring probation, we conclude that the district court did not abuse its discretion in revoking appellant's probation and affirm.

FACTS

In October 2009, appellant Stacy Michael Dotts pleaded guilty to felony third-degree assault in violation of Minn. Stat. § 609.223, subd. 1 (2008), for slapping and punching a person in the face with a closed fist. Appellant received a stay of execution of a prison sentence of 36 months, a downward dispositional departure. The terms of appellant's probation included, among other things: abstaining from alcohol and illegal or non-prescribed drugs, participating in a chemical-dependency evaluation and any recommendations for primary or aftercare treatment, completing an anger-management program, submitting to a psychological evaluation and following the recommendations of the evaluator, submitting to random urinalysis (UA), paying restitution, and keeping in contact with probation.

In March 2010, appellant's probation officer filed a report alleging that appellant had violated the terms of his probation by (1) missing two probation appointments; (2) being discharged from aftercare treatment for missing three sessions; (3) self-reporting that he was addicted to pain medication, had started drinking, and had checked himself into a detox center; (4) failing to complete anger management; (5) failing to provide proof of completion of a psychological evaluation; (6) missing five UAs; and

(7) failing to pay any restitution. The district court issued an order for appellant's arrest and detention.

Appellant was observed with an open can of beer at the corner of 15th Avenue South and 27th Street East by Minneapolis police; he was cited for loitering with an open bottle and arrested. An additional probation violation report was then filed, which reasserted the prior allegations, added the loitering citation, and clarified that appellant had failed to follow through with the recommendations of his psychological evaluation by missing two appointments with his psychiatrist.

A revocation hearing subsequently took place. Appellant and his probation officer testified. The probation officer testified that appellant completed primary treatment for chemical dependency, but had not followed through with aftercare treatment and had been discharged from the sober house. She also testified that she was aware that appellant wanted to leave the sober house, but was not supportive of appellant's decision and reminded him that he still needed to comply with the recommendations of his psychologist and complete aftercare. The probation officer testified that appellant told her that he completed aftercare treatment, but never provided her with any verification.

Concerning anger management, the probation officer testified that appellant was initially referred to a domestic-abuse program, but did not show up for two orientations and then told her that the program would not accept him because his offense did not involve domestic violence. Appellant's probation officer gave him another referral, but appellant was subsequently discharged from that program when he failed to attend the

orientation. The probation officer testified that appellant had not provided verification that he had completed an anger-management program.

Appellant's probation officer testified that appellant reported that he was addicted to Vicodin medication and had been drinking alcohol. She was also aware of the loitering citation. Additionally, she testified that appellant had missed two in-person appointments with her, but had later called to explain that he was at a crisis center around the time of one of the appointments; missed two appointments with his psychiatrist; and missed five UAs. She also testified that appellant had not made any payments toward his restitution obligation and, while she did not believe that appellant had received all of the information regarding restitution, he had been told about it.

Appellant's probation officer also stated that appellant had checked himself into a detox center for a period of time. She testified that she did not find appellant to be forthcoming and acknowledged that appellant had his probation revoked in four prior cases.[1] Appellant's probation officer testified that she did not believe appellant was amenable to probation and recommended that the district court execute his sentence.

Appellant testified that he was suffering from severe depression, post-traumatic-stress syndrome, antisocial disorder, and anxiety. Appellant also testified that he had attended six aftercare treatment classes for chemical dependency, which were not the

[1] Appellant's prior convictions include possession of controlled substances with the intent to sell in 1988, for which a revocation hearing was held in 1991; terroristic threats in 1991, for which a revocation hearing was held in 1993; fifth-degree controlled substance crime in 1998, for which a revocation hearing was held in 1999; and an additional fifth-degree controlled substance crime in 2000, for which a revocation hearing was held later that same year. In short, appellant has never successfully completed probation on any of these four felonies.

classes he was originally directed to take, but were more intensive because they had an additional mental-health component. Appellant acknowledged that he had checked himself into a hospital crisis center and told his probation agent where he was. Appellant also testified that he did not have any money for transportation, which is why he missed his appointments and UAs. Appellant additionally explained that he missed one of the appointments with his probation officer because he was at the detox center.

Appellant testified that he was on his way downtown to turn himself in when the police stopped him for loitering. Appellant stated that he was trying to explain to the officers that there was a warrant out for his arrest, but there was some confusion because his identification was in his legal name.[2] Appellant also said that the beer can belonged to a group of people who had walked away when the officers stopped appellant.

Appellant testified that he was out of town at the time of the orientation for the second anger-management program and did not reschedule because he was "trying to get "[him]self stable." Appellant stated that he had explained to his probation officer that it was economically difficult for him to make any sort of meaningful payment towards restitution. Appellant also said that he would like to continue treatment at New Beginnings. On cross-examination, appellant acknowledged that lab results from the hospital crisis center were positive for cocaine and marijuana.

On rebuttal, appellant's probation officer testified that she had spoken with a Rule 25 assessor about New Beginnings and was told "that when somebody wants to go to that

[2] In 1995, appellant's legal name became Sha'bazz Khalil Dotts-El.

program it's a red flag" and that the "program isn't a credible program and has been having some issues."

The district court reminded appellant that his medical conditions and mental-health issues were known at the time of sentencing and were the reason for the initial departure. The district court found that appellant had been given many opportunities to get the help he needed, appellant had spurned those opportunities, and appellant continued to be manipulative. The district court observed that appellant's "own testimony is that by being incarcerated [he is] really forced to consistently take [his] medications, which [he] indicate[s] help [him]." The district court found that appellant is not able to regularly manage his medication on his own, which was demonstrated by his performance on probation. The district court concluded:

> I don't find I have any options. I think you're better off, mentally and physically, in a controlled environment where you get your medications as needed.
>
> So I am finding that your behavior on probation—you violated intentionally and willfully the conditions of probation that required you to have no use, to complete treatment, to complete an anger management program and deal with your mental health issues by completing the testing and starting what would be recommended if there was a valid test that had ever been produced.
>
> I'm finding that lesser—less restrictive alternatives are not appropriate in this case. I did dispositionally depart, initially, giving you a chance. Probation has given you several chances . . . and you have not managed to comply or follow through.

The district court revoked appellant's probation and executed his sentence. 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). Before revoking probation, the district court must designate the specific conditions violated, find that the violations were intentional or inexcusable, and find that the need for confinement outweighs the policies favoring probation. *Id.* at 250. Appellant challenges only the third requirement, contending that the evidence does not show that the need for confinement is outweighed by the policies favoring probation. Whether the district court has made the required findings is a question of law which this court reviews de novo. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

"[O]nce an intentional or inexcusable violation has been found, the court must proceed to an evaluation of whether the need for confinement outweighs the policies favoring probation." *Id.* at 608. This evaluation guards against reflexive revocations of probation to technical violations. *Id.*; *Austin*, 295 N.W.2d at 251. "In some cases, policy considerations may require that probation not be revoked even though the facts may allow it . . . . 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." *Austin*, 295 N.W.2d at 250. When taking into account these policy considerations, the district court should evaluate 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.

Modtland, 695 N.W.2d at 607 (quoting *Austin*, 295 N.W.2d at 251).

Appellant asserts that the record does not show that the need for confinement is outweighed by the policies favoring probation because (1) he "suffers from serious mental health issues"; (2) the chemical-dependency program did not address both his chemical dependency and mental-health issues; and (3) his completion of the primary treatment portion of the chemical dependency program shows that he is amenable to treatment and probation. The state contends that the district court properly "recognized [a]ppellant was in need of correctional treatment that could most effectively be provided if [a]ppellant were confined, in that [a]ppellant was not modifying his antisocial behavior and getting the help needed while on probation."

The district court specifically found that less restrictive alternatives were not appropriate for appellant, pointing to appellant's own testimony that incarceration forces him to consistently take medications, which are beneficial to him. While "revocation should be used only as a last resort when treatment has failed," *Austin*, 295 N.W.2d at 250, the state is correct that appellant has provided no legal authority for his contention that he must "deplete[] all resources in the community" before his probation may be properly revoked. Additionally, as the state points out, appellant was provided with community resources to address his chemical dependency and mental-health issues, but failed to follow through with both the chemical-dependency program and his psychiatrist.

See Austin, 295 N.W.2d at 251 (stating it is "not unreasonable to conclude that treatment ha[s] failed" when a probationer "has been offered treatment but has failed to take advantage of the opportunity or to show a commitment to rehabilitation"). Given appellant's failure to utilize the resources provided to him, his own testimony that incarceration helps him consistently take his medication, and his history of being unable to successfully complete probation, there was sufficient evidence to conclude that treatment can most effectively be provided to appellant if he is confined. The district court did not abuse its discretion in revoking appellant's probation.

Affirmed.