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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1563**

State of Minnesota,
Respondent,

vs.

Rarity Abdullah,
Appellant

**Filed May 3, 2011
Affirmed
Stoneburner, Judge**

Hennepin County District Court
File No. 27CR0937660

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

Michael O. Freeman, Hennepin County Attorney, David C. Brown, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wright, Presiding Judge; Stoneburner, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges revocation of his probation, arguing that (1) the district court erred by considering a dismissed criminal charge as a violation; (2) some of his violations were excusable; and (3) the policies favoring probation outweighed the need for confinement. We affirm.

DECISION

In order to revoke probation, the district court must make findings (1) designating the specific condition or conditions of probation violated; (2) finding that the violations were intentional or inexcusable; and (3) finding that the need for confinement outweighs policies favoring probation. *State v. Modtland*, 695 N.W.2d 602, 606 (Minn. 2005) (citing *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980)). When a district court finds that a probationer has violated the terms of probation, the district court may order execution of a previously stayed sentence. Minn. Stat. § 609.14, subds. 1(a), 3(2) (2010). We review a probation revocation for abuse of discretion. *State v. Ornelas*, 675 N.W.2d 74, 79 (Minn. 2004).

In 2009, appellant Rarity Abdullah pleaded guilty to second-degree assault and was sentenced to 36 months in prison. Execution of sentence was stayed, and Abdullah was placed on probation with conditions. Soon after he was placed on probation, Abdullah was charged with felony possession of a controlled substance. He was convicted. In January 2010, Abdullah left the state of Minnesota without the permission of his probation agent. He missed an appointment with his probation agent while he was

out of state. He was arrested in Texas, and he returned to Minnesota. In March 2010, he was charged with violating a no-contact order and making terroristic threats toward the victim of his earlier assault. Probation-revocation proceedings were continued until those charges were resolved. The no-contact and terroristic-threats charges were dismissed in June 2010 because the state could not locate the alleged victim. But, at the subsequent probation-revocation hearing, Abdullah and the state stipulated to admission of the complaint for the district court's consideration of whether a violation of law occurred in connection with that incident.

The district court found, on the record, that Abdullah violated (1) the probation condition requiring that he remain law-abiding, proved by the conviction of felony possession of a controlled substance and evidenced by the complaint; (2) the probation condition that he not leave the state without permission of the probation agent when he left the state of Minnesota without permission from his probation agent; and (3) the no-contact-with-victim provision of probation, as evidenced by the complaint in the dismissed action (which stated that he had been arrested in the parking lot of the victim's residence). The district court specifically found that the violations were intentional and inexcusable and that the need for confinement outweighed the policies favoring probation. The district court noted that Abdullah "is an intelligent man who clearly . . . has the ability to be law abiding . . . but for some reason finds himself here quite often. I believe that confinement is necessary to protect the public from further criminal activity." The district court also found that the correctional setting would be the most effective place for treatment. Abdullah then addressed the district court, complaining that he did

not get sufficient assistance in finding a treatment program, that he was falsely accused in the dismissed case, that he only left the state because he feared for his life after he had been shot (in an incident that is not explained in the record), and that his involvement with drugs was just “one bad mistake.” The district court repounded that its decision remained the same.

Abdullah argues that the district court erred by relying on information in the complaint regarding the dismissed charges and that, without those infractions, his other violations were excusable or did not warrant revocation of probation. Abdullah cites *State v. Scholberg*, 393 N.W.2d 247, 249 (Minn. App. 1986), for the proposition that a complaint is, by itself, insufficient to prove a probation violation by clear and convincing evidence. But, as the state argues, Abdullah stipulated to admission of the complaint in lieu of testimony and did not challenge the information in the complaint concerning the location of his arrest, which appears to be the only allegation in the complaint that the district court relied on. And even if the district court erred in finding that the complaint established violation of the no-contact provision, the record contains clear and convincing evidence of the other violations which independently support revocation of probation. The district court acknowledged that the complaint had been dismissed and stated that it would give it “the weight I think it deserves,” which was not as much weight as Abdullah’s convictions. Revocation hearings are flexible, and the district court can consider evidence that would not be admissible in an adversary criminal trial. *Morrissey v. Brewer*, 408 U.S. 471, 489, 92 S. Ct. 2593, 2604 (1972).

Abdullah argues that the record does not support the district court's finding that he intentionally or inexcusably left the state without permission because he left in fear for his life and was not thinking rationally at that moment. The record does not contain any evidence about why Abdullah left the state other than his statement to his probation officer that he left because he feared for his life. On this record, we cannot conclude that the district court's finding that this violation of probation was intentional and inexcusable was clearly erroneous.

Abdullah argues that the district court abused its discretion by revoking probation because the policies favoring probation outweigh the need for confinement. Abdullah asserts that confinement should only be mandated when treatment has failed or the offender is in need of treatment that can best be provided while in confinement. *See Modtland*, 695 N.W.2d at 607 (stating that probation should only be revoked when treatment has failed); *see also Austin*, 295 N.W.2d at 251 (stating that probation revocation should consider the state's interest in rehabilitating the probationer, including offering treatment that is best administered while the probationer is confined). But treatment was not a condition of Abdullah's probation, and the district court found that if Abdullah wants treatment, it is best provided to him in the correctional setting.

Although Abdullah offered evidence of some support in the community, he told the district court:

You know, I deserve a chance. Like I said, I'll do some time, but I mean, I just don't know what else to do 'cause I don't have [any]body to help [me]. I mean, it's hard in a young community growing up where you don't have [any]body to

talk to . . . no programs[.] . . . [I]t's just ridiculous. . . . [I]t's not easy out there.

On this record, the district court did not abuse its discretion by finding in this case that protecting the public from further criminal acts outweighed policies favoring probation.

Affirmed.