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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1989**

State of Minnesota,
Respondent,

vs.

Terrance Dujuan Mann,
Appellant.

**Filed July 5, 2011
Affirmed
Hudson, Judge**

Hennepin County District Court
File No. 27-CR-04-78658

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

Michael O. Freeman, Hennepin County Attorney, Michael K. Walz, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Kalitowski, Presiding Judge; Hudson, Judge; and
Collins, Judge.*

* Retired judge of the district court, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HUDSON, Judge

Appellant challenges the revocation of his probation, arguing that the district court abused its discretion by revoking probation because the state failed to prove by clear and convincing evidence that he violated a condition of probation and because the policies favoring probation outweigh the need for confinement. We affirm.

FACTS

On January 28, 2005, appellant Terrance Dujuan Mann pleaded guilty to one count of refusal to submit to a chemical test in violation of Minn. Stat. § 169A.20, subd. 2 (2004). On February 25, 2005, the district court sentenced appellant to 42 months in prison, but stayed the execution of the sentence for five years. Appellant's probation was contingent upon several conditions, including compliance with "all local, state, and national laws."

On May 4, 2009, a probation-violation report was filed alleging that appellant had failed to remain law-abiding by twice driving after cancellation of his license. On September 17, 2009, appellant pleaded guilty to driving after cancellation on August 21, 2008, and admitted that the offense constituted a probation violation. He was sentenced to 10 days in jail on the driving-after-cancellation charge and 21 days in jail for the probation violation, to be served concurrently to each other.

On March 16, 2010, a second probation-violation report was filed alleging that appellant failed to remain law-abiding by driving after the cancellation of his license on July 29, 2009, fleeing a peace officer in a motor vehicle on October 25, 2009, and driving

after cancellation of his license and obstructing legal process on January 20, 2010. On August 16, 2010, the district court held a contested probation-violation hearing. The hearing focused on the allegation that appellant fled from a peace officer on October 25, 2009.

Appellant's probation officer testified that the driving-after-cancellation and fleeing-a-peace-officer charges had not yet been resolved, but she did not testify regarding the status of the obstructing-legal-process charge. Based on appellant's prior violation and the pending charges, she recommended that appellant's probation be revoked. But she conceded that appellant had complied with all other conditions of probation.

A state trooper also testified regarding the facts underlying the fleeing-a-peace-officer charge. On October 25, 2009, the state trooper was on patrol in a marked squad car in Bloomington. She was traveling northbound on Highway 77 and approaching Old Shakopee Road when she noticed a black Jeep parked on the southbound shoulder of Highway 77, a blue car parked immediately behind it, and appellant urinating outside the Jeep. She turned around, activated her emergency lights, and parked behind the blue car.

As the state trooper pulled up, appellant got into the driver's side of the Jeep and started to drive off. She moved her squad between the Jeep and the blue car, exited the squad, and approached the Jeep. The state trooper advised appellant that she had seen him urinating on the side of the highway and asked him if he had a driver's license. Appellant responded, "No," and instead provided an expired Illinois driver's license and a current Minnesota state identification card.

The state trooper asked appellant to move to the left shoulder and to remain in the vehicle. But as she went to speak with the driver of the blue car, appellant activated the Jeep's hazard lights and pulled away from the scene. The state trooper returned to her squad, turned on her lights and sirens, and followed appellant, with two other squads eventually joining the pursuit. She followed appellant at speeds of more than 90 miles per hour for approximately five minutes, at which point her lieutenant terminated the pursuit.

The district court found by clear and convincing evidence that appellant was driving after his license had been cancelled and that he fled a peace officer, "endangering . . . the troopers and other law enforcement chasing him, as well as other individuals." The district court further found that appellant "willfully and intentionally violated [his] probation." Finally, the district court found that appellant was "a risk to public safety given his continuing behavior" and that his violations "indicate[] . . . that he is not amenable to probation." The district court revoked appellant's probation and executed the 42-month sentence.

DECISION

To revoke a defendant's probation, the district court must (1) identify 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. *State v. Austin*, 295 N.W.2d 246, 250–51 (Minn. 1980). The district court has broad discretion to determine whether there is sufficient evidence to revoke probation and should be reversed only if it clearly abused that discretion. *State v. Modtland*, 695

N.W.2d 602, 605 (Minn. 2005). Appellant contends that the district court abused its discretion by finding that appellant violated the conditions of his probation and that the need for appellant's confinement outweighs the policies favoring probation.

Probation violation

A probation violation must be proved by clear and convincing evidence. *See* Minn. R. Crim. P. 27.04, subd. 2 (permitting probation revocation on finding clear and convincing evidence of probation violation). Appellant was accused of violating his probation by fleeing a peace officer, which requires that he (1) “by means of a motor vehicle fle[d] or attempt[ed] to flee a peace officer who [was] acting in the lawful discharge of an official duty” and (2) “[knew] or should [have] reasonably know[n] the same to be a peace officer.” Minn. Stat. § 609.487, subd. 3 (2008). The state trooper testified that she was in a marked squad car; appellant failed to produce a valid driver's license; she told appellant to wait while she spoke to the driver of the blue car, and, despite this instruction, appellant drove away and led the state trooper and other officers on a high-speed chase. This testimony constitutes clear and convincing evidence that appellant fled a peace officer and thereby violated his probation.

Appellant argues that because the state trooper's testimony was largely the same as her statements in the criminal complaint, it could not establish appellant's probation violation by clear and convincing evidence. Appellant cites *State v. Scholberg* in support of his argument, but his reliance on this case is misplaced. 393 N.W.2d 247, 249 (Minn. App. 1986). In *Scholberg*, this court concluded that a defendant's admission that he faced a new charge was insufficient to establish that appellant had committed the charged

offense and thereby violated a condition of probation. *Id.* But here, neither the state nor the district court relied on the mere existence of a new charge to establish that appellant had violated his probation. Instead, the state and the district court relied on the testimony of a state trooper as to facts that showed by clear and convincing evidence that appellant had fled a peace officer. It is irrelevant that those same facts provided the basis for the complaint.

Appellant further argues that because the state did not secure a conviction against appellant on the fleeing charge, the state could not establish by clear and convincing evidence that he fled from a peace officer. But appellant cites no authority for the proposition that the state can only prove a probation violation by clear and convincing evidence by securing a conviction on the underlying offense. To the contrary, we have previously held that a district court can adjudicate a probation violation without waiting for a conviction. *See State v. Phabsomphou*, 530 N.W.2d 876, 879 (Minn. App. 1995) (concluding that the district court need not postpone a revocation hearing pending the resolution of a criminal charge that forms the basis for the violation), *review denied* (Minn. June 29, 1995).

Need for confinement v. policies favoring probation

In determining whether the need for confinement outweighs the policies favoring probation, the district court must consider whether

- (i) confinement is necessary to protect the public from further criminal activity by the offender;
- (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 605 (quotation omitted). The district court found that appellant drove after cancellation of his license, that he fled a peace officer, and that in doing so, he “endanger[ed] . . . the troopers and other law enforcement chasing him, as well as other individuals.” These findings support the district court’s determination that appellant is “a risk to public safety given his continuing behavior” and that his violations “indicate[] . . . that he is not amenable to probation.” Although the district court did not specifically state that appellant’s confinement is necessary to protect the public, the language of the order clearly conveys that finding.

Appellant appears to contend that the revocation of his probation was inappropriate because the second probation-violation report was filed several months after the alleged violations and one month after his probationary term expired. But if a probation violation has occurred during the term of the stay and the term of the stay has since expired, the probation officer may request that the court initiate probation-revocation proceedings at any time within six months after the expiration of the stay. Minn. Stat. § 609.14, subd. 1(b) (2008). It would have been preferable for appellant’s probation officer to have filed the second probation-violation report before the probationary term expired, but it was not unlawful for her to file the report within the six-month window established by law. The district court did not abuse its discretion in finding that appellant’s confinement is necessary to protect the public from further criminal activity by appellant, even though appellant’s probation officer filed the

probation violation report almost five months after appellant violated his probation by fleeing the state trooper.

Affirmed.