STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0875

State of Minnesota,
Respondent,

vs.

Thomas Mark Beaulieu, Jr.,
Appellant.

Filed January 13, 2014
Affirmed
Crippen, Judge[*]

Itasca County District Court
File No. 31-CR-09-1438

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

John J. Muhar, Itasca County Attorney, Todd S. Webb, Assistant County Attorney, Grand Rapids, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate State Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Connolly, Judge; and Crippen, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

CRIPPEN, Judge

Appellant Thomas Mark Beaulieu, Jr., disputes the revocation of his stay of imprisonment, arguing that the evidence relied on by the district court did not support the decision, his probation violations were not intentional or inexcusable, and the need for his confinement did not outweigh the policies favoring his remaining on probation. We affirm.

FACTS

In February 2010, appellant pleaded guilty to two counts of third-degree criminal sexual conduct in violation of Minn. Stat. § 609.344, subd. 1(b) (2008). The district court stayed adjudication and placed appellant on probation for five years. Conditions of probation included a ban on use or consumption of alcohol or controlled substances, a similar ban on use or possession of pornography, completion of chemical-dependency and psychiatric evaluations and recommended treatment programs, completion of sex-offender treatment, and a ban on contact with the victim or unsupervised contact with any females under age 18.

Thereafter, appellant admitted to probation violations that were reported in August 2010, March 2011, and August 2011. The first violation involved committing a gross-misdemeanor theft offense; the second violation was in the form of multiple conduct, including having contact with minor females, using alcohol and marijuana, failing to attend sex-offender treatment, and missing meetings with his probation agent; and the third violation involved unauthorized contact with minor females. In each instance, the

district court found that appellant's conduct violated the terms of his probation and imposed progressively longer jail sentences. Eventually, the district court imposed stayed prison sentences of 48 months and 60 months for the two offenses of conviction.

On October 23, 2012, a violation report was filed by appellant's probation agent. At a contested hearing, appellant admitted to viewing pornography, but he denied six other violation allegations. After hearing testimony from appellant, his probation agent, and others, the district court found that appellant violated probation by failing to submit to urinalysis testing and complete sex offender treatment, having contact with a minor female, and viewing sexually explicit or pornographic material. At the conclusion of the hearing, the district court revoked appellant's probation and executed his prison sentences.

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). Under *Austin*, the district court must make three findings before revoking probation: identifying the conditions that were violated, determining that the violations were intentional or inexcusable, and deciding that "the policies favoring probation no longer outweigh the need for confinement." *State v. Osborne*, 732 N.W.2d 249, 253 (Minn. 2007) (citing *Austin*, 295 N.W.2d at 250); *see State v. Modtland*, 695 N.W.2d 602, 607 (Minn. 2005). The district court must not reflexively revoke probation for technical violations and must

determine that the "offender's behavior demonstrates that he . . . cannot be counted on to avoid antisocial activity." *Austin*, 295 N.W.2d at 251 (quotation omitted).

Appellant challenges the district court's ruling that his act of "liking" the "Freaks Only" website on his Facebook page was a violation of his probation. But appellant admittedly viewed pornography on "Pornhub," and the district court found that appellant also violated probation by having repeated contact with numerous minor females, being dismissed from sex-offender treatment after failing to make progress, and failing to participate in urinalysis testing. These violations were for terms of probation that were tied to appellant's criminal behavior, they demonstrate the seriousness of appellant's violations, and they support the district court's revocation decision. Further, appellant was prohibited from viewing sexually explicit material under the terms of his probation, and appellant's sex-offender therapist and his probation agent testified that the "Freaks Only" website was sexually explicit. Although appellant argues that he merely "liked" the website, his probation agent testified that appellant added the site to his homepage, "liked" it, and had been visiting it. Appellant's arguments on this issue depend on facts that are contrary to the district court's findings and the weight of the evidence. *See State v. Losh*, 694 N.W.2d 98, 102 (Minn. App. 2005) (deferring to district court's credibility determinations in probation-revocation proceeding), *aff'd on other grounds*, 721 N.W.2d 886 (Minn. 2006).

Appellant next argues that the district court erred by finding that three of his violations were intentional and inexcusable. He first challenges the district court's finding that he violated his probation by missing three urinalysis tests without excuse,

asserting that the district court should have given credence to his testimony that he could not afford the tests. But the court also heard testimony that appellant worked 60 hours per week at a minimum-wage job and found that appellant "was working and making pretty significant reasonable income with his overtime . . . ." The district court rejected four of the other testing violations that were outside of appellant's period of employment, and found that only the three random tests comprised this violation. The record supports the district court's conclusion that this violation was intentional and inexcusable.

Appellant next argues that his contacts with a 17-year-old minor female were merely "incidental" and not inexcusable. But the district court heard testimony that appellant had repeated contacts with the 17-year-old, that appellant was warned that the contact was a probation violation, and that appellant had been directed to leave his friend's apartment when the 17-year-old arrived but chose not to do so. The record supports the district court's conclusion that this violation was intentional and inexcusable.

Appellant also claims that his failure to complete sex-offender treatment was not intentional and inexcusable because his failure to complete treatment was largely "circumstantial" due to insurance issues. Appellant's therapist testified that appellant was dismissed from sex-offender treatment for numerous reasons, including his chemical use, failed polygraphs, missed appointments, use of pornography, and contact with minor females. The therapist testified that appellant "has a history of not being honest, pretty argumentative in group, didn't handle confrontation well, [and] didn't accept responsibility well." The therapist also noted that appellant had failed treatment two previous times, and appellant admitted to having difficulty participating in the treatment

program. The record supports the district court's finding that this violation was intentional and inexcusable.

Finally, appellant argues that the need for his confinement did not outweigh the policies favoring his remaining on probation, when confinement is intended only as a "last resort." *Austin*, 295 N.W.2d at 250. Essentially, appellant argues that the district court overlooked facts favoring probation while relying on facts that supported execution of sentence. Appellant had multiple and varied probation violations, the most serious of which were linked to his original criminal behavior. On these facts, the district court did not err in determining that the need for appellant's incarceration outweighed the presumption in favor of continued probation. *See Osborne*, 732 N.W.2d at 253 (stating that probation revocation is generally appropriate when "the original offense and the intervening conduct of the offender [show] that confinement is necessary to protect the public, provide correction, or avoid unduly depreciating the seriousness of the offense").

Affirmed.