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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0090**

State of Minnesota,
Respondent,

vs.

Nathan Paul Brooks,
Appellant.

**Filed August 7, 2017
Affirmed
Larkin, Judge**

Mower County District Court
File No. 50-CR-14-1862

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

Kristen Nelsen, Mower County Attorney, Megan Burroughs, Assistant County Attorney,
Austin, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his probation revocation, arguing that the district court abused its discretion by concluding that the need for his confinement outweighs the policies favoring probation. We affirm.

FACTS

In January 2015, appellant Nathan Paul Brooks pleaded guilty to felony first-degree driving while impaired (three prior qualified impaired-driving incidents within ten years). The state dismissed a companion charge of driving after cancellation (inimical to public safety). The district court imposed and stayed a 36-month prison term and placed Brooks on probation for up to seven years. The probationary conditions included that Brooks not use or possess alcohol or nonprescribed controlled substances, have no alcohol or controlled substances in his residence, not be present where alcohol or other mood-altering chemicals are used or sold, not drive without the permission of his supervising agent, and remain law abiding. The district court ordered Brooks to serve 180 days of local jail time, executed 30 days of that time, and stayed the remaining 150 days subject to further review.

On April 14, 2016, the district court held a review hearing in Brooks's case. The district court was informed that among other efforts, Brooks was attending regular community-based treatment meetings and seeing a psychiatrist. Brooks told the district court that his sobriety was "going very well" and that he had been sober since August 2, 2015. The district court did not require Brooks to serve any of the stayed local jail time and scheduled another review hearing in six months. Days later, Brooks's probation agent

filed a probation-violation report, alleging that Brooks had recently used alcohol and marijuana, possessed alcohol, and failed to remain law abiding.

In October 2016, the district court held a contested probation-revocation hearing. Brooks admitted that he had been “using marijuana daily up until about five days prior to April 16th or 15th” and that he had told an officer that he “consumed a liter of vodka on April 15th.” He also admitted that guests brought alcohol to a bonfire he attended at his father’s residence and that he had driven a Chevy Suburban and an all-terrain vehicle. He acknowledged that he knew that his driver’s license was cancelled as inimical to public safety when he drove the Suburban.

A probation agent recommended that the district court revoke Brooks’s probation, arguing, “[H]e was just before the Court, having his sentence reviewed and the very next day he’s out doing exactly what . . . probation is telling him he should not be doing.”

The district court found that Brooks willfully, intentionally, and inexcusably violated the conditions that he not use alcohol or controlled substances, that he not drive, and that he remain law abiding. The district court also found that the need for Brooks’s confinement outweighed the policies favoring probation. The district court revoked Brooks’s probation and executed his 36-month prison sentence. Brooks appeals.

D E C I S I O N

Before a district court revokes a defendant’s probation, it “must (1) designate the specific condition or conditions that were violated; (2) find that the violation was intentional or inexcusable; and (3) find that need for confinement outweighs the policies favoring probation.” *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). In assessing the

third factor, the district court determines whether “confinement is necessary to protect the public from further criminal activity by the offender,” “the offender is in need of correctional treatment which can most effectively be provided if he is confined,” or “it would unduly depreciate the seriousness of the violation if probation were not revoked.” *Id.* at 251 (quotation omitted).

The decision to revoke probation “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.” *Id.* (quotation omitted). 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.” *Id.* at 249-50.

Brooks contends that the district court abused its discretion “because the record did not establish that the need for confinement outweighed the policies favoring probation.” He argues that “[t]his was [his] first probation violation and, prior to being placed on probation, he was on pre-trial conditional release for several months where he had a daily check-in with no violations” and that “[t]he district court had other options to impose as a consequence for [his] violation.” The state counters that “the fact that [Brooks] successfully completed treatment and was otherwise succeeding, yet still violated his conditions of no use and no driving, is especially concerning. It shows that not only did treatment fail, but even with all the tools and support he had available to him, he still cannot be counted on to avoid drinking and driving.”

As to the third *Austin* factor, the district court considered whether “confinement is necessary to protect the public from further criminal activity” and whether “doing something other than . . . sending [Brooks] to prison, [would] depreciate the seriousness of the violation.” The district court acknowledged that Brooks’s addiction may have influenced some of his decisions. But it reasoned that other decisions were not “driven by the addiction,” including “the choice . . . to get behind the wheel of a motor vehicle, the decision to drive when there is a specific prohibition on [him] driving and to place [himself] in an environment where there are folks drinking.” The district court also reasoned that Brooks “had very recently been before [that] court” for a review hearing and there did not appear to be “any discussion on [Brooks’s] part about the fact that [he was] struggling and that [he] needed help.” The district court concluded: “The exact reason we’re here, those are the two things coupled together that [Brooks] had to know for sure [he] couldn’t do. It’s not just continued use, it’s continued use and driving. That’s where [Brooks is] dangerous.”

Brooks argues that the decision to revoke his probation “was the type of decision condemned in *Austin*.” We disagree. Probationer Austin was convicted of burglary and aggravated assault. *Id.* at 248. He failed to enter a drug treatment program, which was ordered as a condition of probation. *Id.* at 249. At the probation-violation hearing, the director of the treatment program testified that he would be willing to accept Austin into the program, notwithstanding Austin’s previous failure to enroll in the program as instructed. *Id.* Despite this testimony, the district court revoked Austin’s probation and executed his sentence. *Id.*

The Minnesota Supreme Court affirmed, reasoning, in part, that Austin had failed “to show a commitment to rehabilitation so it was not unreasonable to conclude that treatment had failed.” *Id.* at 251. The supreme court concluded that “the record shows the seriousness of his violation would be denigrated if probation were not revoked,” and thus, “policy considerations required revocation.” *Id.*

Brooks’s violations are arguably more serious than Austin’s because Brooks engaged in the same type of conduct that underlies his conviction: Brooks used alcohol and he drove a motor vehicle. These clear probation violations created the very risk to public safety that the probationary conditions were intended to prevent. The violations are hardly technical. Moreover, they establish that Brooks is not committed to rehabilitation and cannot be counted on to avoid antisocial activity.

Contrary to the remaining arguments in Brooks’s brief, the law does not prevent a district court from revoking probation for an offender’s first violation, in the absence of a new conviction, or when additional treatment options and intermediate sanctions are available. Even in such circumstances, Minnesota’s district court judges are entrusted to make difficult decisions that balance the probationer’s freedom and public safety. We will not second guess these decisions if the district court makes the necessary *Austin* findings, the record supports the findings, and the district court’s reasoning is soundly explained. In this case, these criteria are satisfied, and the district court did not clearly abuse its discretion by revoking Brooks’s probation.

Affirmed.