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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1557**

State of Minnesota,
Respondent,

vs.

Jessica Denise Talbot,
Appellant.

**Filed June 18, 2018
Affirmed
Smith, Tracy M., Judge**

Stearns County District Court
File No. 73-CR-12-8631

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

Janelle P. Kendall, Stearns County Attorney, Kyle R. Triggs, Assistant County Attorney,
St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Lauermann, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Smith, Tracy M., Judge; and
Bratvold, Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Jessica Talbot challenges the revocation of her probation, arguing that the
state failed to establish that (1) she violated a condition of probation, (2) any violations

were intentional or inexcusable, or (3) the need for confinement outweighed the policies favoring probation. We affirm.

FACTS

Following a traffic stop on September 16, 2012, Talbot was charged with felony driving while intoxicated (DWI) and test refusal, as well as a gross misdemeanor for driving after cancellation of her license (inimical to public safety). In early 2014, Talbot pleaded guilty to felony DWI, and in exchange her other charges were dismissed. The district court stayed Talbot's 42-month sentence and placed her on seven years of supervised probation with Stearns County Community Corrections.

Over the course of the next two years, Talbot violated the conditions of her probation four times by failing to abstain from using alcohol and mood-altering chemicals and missing required drug tests.

After admitting to her fourth probation violation at a probation-violation hearing in November 2016, probation recommended that Talbot attend Vinland National Center (Vinland) for inpatient chemical-dependency-treatment programming. Talbot completed this program and was discharged on February 27, 2017. Although Vinland recommended and enrolled Talbot in its outpatient program, with a start date of March 20, 2017, Talbot never attended. In addition, after her inpatient discharge, Talbot fell out of contact with her probation agent and moved to Hennepin County without updating Stearns County probation. Stearns County probation filed a fifth probation-violation report, alleging that Talbot failed to enter recommended outpatient programming at Vinland and had not been in contact with probation since February.

Talbot was picked up on a probation-violation warrant, and, in July 2017, a contested revocation hearing was held. The state presented testimony from Talbot's probation agent that Talbot had not contacted probation since February 2017. The agent also testified that, three days earlier, he had directed Talbot to come to his office before the hearing to provide a sample for urine analysis (UA) and documentation of the treatment services she claimed to have been using since leaving inpatient treatment. Talbot never came in. At the hearing, Talbot confirmed that she had completed the inpatient treatment at Vinland. Talbot also testified that, upon finishing the inpatient program, she had been involved in a number of outpatient meetings, including Re-Entry Project, "bible study slash AA meeting," and additional AA meetings three or four times a week in Minneapolis. Talbot agreed that Vinland had recommended its aftercare outpatient program following her completion of inpatient treatment and said that she planned to attend this outpatient treatment the week after the revocation hearing.

The district court found that Talbot violated the conditions of her probation by failing to attend outpatient treatment and failing to stay in contact with probation, that these violations were intentional and inexcusable, and that the need for confinement outweighed the policies favoring probation. The court revoked probation and executed Talbot's prison sentence.

Talbot appeals.

D E C I S I O N

The district court has broad discretion in determining whether there is sufficient evidence to revoke probation. *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). We

will reverse a district court's decision to revoke probation only if the district court abused its discretion. *Id.*

When an offender violates a condition of probation, the district court may revoke probation and execute the previously stayed sentence. Minn. Stat. § 609.14, subd. 3 (2016). Before revoking probation and executing the stayed sentence, the district court 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.” *Austin*, 295 N.W.2d at 250. The state must prove a probation violation by clear and convincing evidence. Minn. R. Crim. P. 27.04, subds. 2(1)(c)(b), 3(1); *State v. Ornelas*, 675 N.W.2d 74, 79 (Minn. 2004). “The decision to revoke 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.” *Austin*, 295 N.W.2d at 251 (quotations omitted).

Talbot challenges the district court’s findings on all three *Austin* factors.

I. Talbot violated one or more conditions of probation.

Talbot argues that her conduct did not violate any probation conditions imposed by the district court. During sentencing, Talbot’s probation was conditioned on, among other things, following all recommendations of her treatment providers and all instructions of probation. After Talbot’s fourth probation violation in the fall of 2016, the district court also imposed the “additional requirement that [Talbot] follow all recommendations of the Rule 25 [assessment] . . . including treatment and aftercare recommendations.” Based on the testimony of Talbot’s probation agent and the violation report, the district court found

that Talbot violated her probation “by not timely entering into the outpatient treatment program” and “by failing to maintain contact with probation.”

Talbot concedes that she did not attend outpatient treatment at Vinland but argues that “she had funding difficulties that delayed her entry,” that she was told she needed to update her rule 25 assessment, and that her Vinland case manager wanted her to attend outpatient treatment only after “her dental issues were resolved,” which had not yet occurred at the time of the revocation hearing. Talbot also argues that, because she “still had time left on probation and nothing in the record shows that Talbot was ever given a deadline by which she had to complete [the aftercare recommendations], the district court was premature when it found that Talbot had failed to enter into . . . treatment in a timely manner.”

The record contradicts Talbot’s assertions. The probation agent testified that, after finishing inpatient treatment, Vinland enrolled Talbot in an outpatient program with a start date of March 20, 2017 and secured her funding. The district court presumably found the agent’s testimony credible, and we will not second-guess that determination on appeal. *See State v. Muhlenhardt*, 403 N.W.2d 638, 639 (Minn. 1987). The probation agent also testified that Talbot had not contacted her probation agent since February 2017, which amounted to over three months of no communication with probation or drug testing. Talbot does not dispute this lack of contact, but rather offers explanations for why her absence was excusable. Sufficient evidence supports the district court’s findings that Talbot violated the conditions of probation requiring her to follow treatment recommendations and remain in contact with probation.

II. Talbot's probation violations were intentional and inexcusable.

Talbot argues that the district court abused its discretion because her violations were not intentional and inexcusable. Talbot contends that failing to attend outpatient treatment was not an intentional or inexcusable violation because (1) she “substantially complied with the requirement and the recommendations of her Rule 25 assessment by completing Vinland’s inpatient treatment program,” (2) “at least some of the delay in entering the outpatient appeared to be with the agreement of her treatment providers and at the direction of Hennepin County, who told Talbot she would need to update her Rule 25 assessment,” and (3) she was never given a deadline for completing outpatient treatment. As to failing to stay in contact with probation, Talbot argues that she suffers from a traumatic brain injury, believed her case manager at Vinland would update her probation agent with her new contact information, and missed the July appointment with probation because her mother was unable to drive her.

In finding Talbot’s violations intentional and inexcusable, the district court noted:

[B]y the testimony of [Talbot’s probation agent] as well as the violation reports in this matter it’s clear [the outpatient treatment program was] set up for Ms. Talbot. I don’t think there’s any indication anywhere that she contacted those people or showed up . . . for those report dates and indicated that she couldn’t follow through for whatever reason, there just was no answer by her.

The district court went on to find:

Ms. Talbot has been on probation long enough to understand your probation is not transferred until you receive notice that it is, and having been on extensive supervision in Stearns County it’s just not reasonable to assume that you don’t have to make

probation meetings or test or do anything for the many months that has transpired in Ms. Talbot's case.

The record supports these findings. Talbot's probation agent testified that Vinland had secured funding and "everything was ready to go" for Talbot's outpatient treatment. At the revocation hearing, Talbot agreed that she knew she would not have to pay for outpatient treatment. Talbot has been on probation since 2014 and reasonably should have known that it was her responsibility to stay in contact with probation. The district court did not abuse its discretion in rejecting Talbot's explanations and finding that she intentionally and inexcusably violated two conditions of her probation.

III. The need for Talbot's confinement outweighs the policies favoring probation.

Talbot argues that the district court abused its discretion in finding that the need for confinement outweighs the policies favoring probation because that finding was "reflexive" rather than supported by a balancing of policies. The need for confinement outweighs the policies favoring probation if:

- (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 [s]he is confined; or
- (iii) it would unduly depreciate the seriousness of the violation if probation were not revoked.

Austin, 295 N.W.2d at 251 (quotation omitted).

Talbot argues the district court's decision was reflexive because she "substantially complied" with the terms of her probation by completing inpatient treatment and by attending AA meetings and other community services. Talbot further argues that, if the district court wanted to ensure that Talbot completed chemical-dependency treatment or

other rehabilitative goals, the court could have best achieved those objectives by keeping Talbot on probation. This follows, according to Talbot, because the court could have extended her probation an additional three years, resulting in a total probationary period of ten years, whereas by revoking probation, Talbot will have only five years of conditional release after she completes the remainder of her 42-month sentence.

A review of the record indicates that the district court's decision to revoke probation was not reflexive. The court specifically found that "it would unduly depreciate the seriousness of the violations if probation were not revoked at this time." The court explained:

I understand [the defense attorney] and Ms. Talbot are indicating that Ms. Talbot is in a good place but, quite frankly, the Court really doesn't have the ability to assess that. I have no way of knowing whether or not Ms. Talbot has in fact been abstaining for the past several months because she's not been in contact with probation and she's not been testing. You cannot be on probation and simply have no contact with probation for that number of months.

The district court's conclusion that Talbot's failures to demonstrate sobriety through testing and to maintain contact with probation were serious violations is especially reasonable in light of Talbot's prior history of DWI and domestic-assault convictions due to her substance abuse. The district court did not abuse its discretion in determining that the third *Austin* factor was met.

Affirmed.