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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1174**

State of Minnesota,
Respondent,

vs.

Carl Lee Franklin,
Appellant.

**Filed February 4, 2019
Affirmed
Bjorkman, Judge**

Olmsted County District Court
File No. 55-CR-13-5225

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mark A. Ostrem, Olmsted County Attorney, Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and
Florey, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges the revocation of his probation for a controlled-substance conviction, arguing that the district court abused its discretion by determining that the need for his confinement outweighs the policies favoring his continuing on probation. We affirm.

FACTS

On August 9, 2013, the state charged appellant Carl Lee Franklin with two second-degree controlled-substance offenses (possession and sale) and misdemeanor domestic assault. Franklin's girlfriend called police after he physically threatened her, and in a search incident to his arrest, police found heroin and two forms of cocaine. He pleaded guilty to one count of second-degree controlled-substance offense (possession). In March 2015, the district court, in accordance with the plea agreement, imposed an 88-month sentence but stayed execution for 20 years to allow Franklin to participate in drug court.

Franklin continued to struggle with chemical use during his two and one-half years in drug court. In October 2015, he was placed into a new treatment program following a relapse. Nine months later, Franklin relapsed again and was detained until he could be placed in inpatient treatment. From July 2017 to October 2017, the drug court conducted five hearings to address separate instances of use or probable use of controlled substances. On October 18, Franklin was discharged from drug court for noncompliance.

In December, Franklin's probation agent filed a report alleging that Franklin had violated his probation by (1) failing to successfully complete drug court; (2) not following

the agent's directives including missing meetings, failing to participate in requested urine-analysis testing, and not responding to communications from the agent after October 19; and (3) leaving his residence without providing a new address. While noting that no prior formal violation reports had been filed, the report includes detailed information about the treatment programs Franklin attended, his continued noncompliant behavior, and the drug court's numerous efforts to support his sobriety through "phase reductions, hold orders and jail sanctions, community work service, and treatment responses." Just before he was dismissed from drug court, law enforcement officers were informed that Franklin sold his car for \$1,000 worth of cocaine. The report concludes that Franklin had "exhausted community resources," and recommends that his probation be revoked.

Franklin admitted the three probation violations. During the disposition hearing, the probation agent reviewed Franklin's history and testified that his confinement is necessary to protect the public from his further criminal activity and ensure that he receives treatment, and that it would unduly depreciate the seriousness of his violation if his probation were not revoked. The agent testified that the Teen Challenge program Franklin sought to attend is not a viable option because Franklin was unlikely to complete the program due to his lengthy unsuccessful treatment history. Franklin argued that his serious medical conditions (HIV and a colloid brain cyst) and public policy favor retaining Franklin on probation.

The district court concluded that the need for Franklin's confinement outweighs the policies favoring his remaining on probation and executed his prison sentence. Franklin appeals.

DECISION

To support revocation of an offender's probation, the state must prove a probation violation by clear and convincing evidence. Minn. R. Crim. P. 27.04, subd. 3; *State v. Ornelas*, 675 N.W.2d 74, 79 (Minn. 2004). A district court has broad discretion to determine whether to revoke probation, and its decision will be reversed only if the court clearly abused its discretion. *Ornelas*, 675 N.W.2d at 79.

Before revoking an offender's probation, a district court must find (1) a specific probation condition was violated, (2) the violation was intentional or inexcusable, and (3) the need for confinement outweighs the policies favoring probation. *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980); see *State v. Modtland*, 695 N.W.2d 602, 606 (Minn. 2005) (citing *Austin*). Revocation must not be "a reflexive reaction to an accumulation of technical violations." *Austin*, 295 N.W.2d at 251 (quotation omitted); see *Modtland*, 695 N.W.2d at 608 (requiring the district court to "seek to convey [its] substantive reason[] for revocation and the evidence relied upon").

Franklin challenges only the third *Austin* finding: that the need for his confinement outweighs the policies favoring probation. In assessing whether the need for confinement outweighs the policies favoring probation, the district court should consider whether (1) confinement is necessary to protect the public from further criminal activity, (2) the offender needs correctional treatment that can most effectively be provided in prison, or (3) reinstating probation would unduly depreciate the seriousness of the violation. *Modtland*, 695 N.W.2d at 607.

The district court determined that continuing Franklin’s probation would “unduly depreciate the violations here.” The record supports this determination. Despite participating in seven treatment programs and receiving the support provided by the highly structured drug court program, his drug use continued unabated. He failed 40 drug tests, and there was other strong evidence of continued drug use. And Franklin’s failure to comply with probation went beyond his failure to maintain sobriety. He repeatedly failed to maintain contact with and cooperate with his probation agent. His noncompliance culminated in his absconding between October 19, 2017, and March 5, 2018, and contacting his agent only after being arrested.

On this record, we conclude that the district court did not abuse its discretion by revoking Franklin’s probation. The district court fully analyzed the *Austin* factors, including the three standards used to determine whether the need for confinement outweighs the policies favoring remaining on probation. *See State v. Fleming*, 869 N.W.2d 319, 331 (Minn. App. 2015) (affirming probation revocation on third *Austin* factor based on offender’s being found with “58 grams of marijuana,” “near exhaustion of relevant programming opportunities,” and the determination that continued probation would unduly depreciate the seriousness of the violation when offender flaunted the law by standing across the street from a park with drugs in his backpack), *aff’d*, 883 N.W.2d 790 (Minn. 2016); *State v. Hemmings*, 371 N.W.2d 44, 47 (Minn. App. 1985) (affirming probation revocation when the offender refused to comply with a treatment program).

Affirmed.