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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1201**

State of Minnesota,
Respondent,

vs.

Paul Matthew Marsh,
Appellant.

**Filed April 1, 2019
Affirmed
Ross, Judge**

Koochiching County District Court
File No. 36-CR-16-740

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

Jeffrey S. Naglosky, Koochiching County Attorney, International Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Jesson, Judge; and Klaphake, Judge.*

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

UNPUBLISHED OPINION

ROSS, Judge

Convicted of first-degree methamphetamine manufacturing, Paul Marsh repeatedly violated his probation conditions by leaving his treatment facility, attempting to falsify a urine sample, smuggling a controlled substance into the facility, using controlled substances, failing to submit to random testing, failing to report to the probation department, failing to complete treatment-aftercare requirements, and failing to remain law abiding. The district court revoked Marsh's probation and executed his stayed, 117-month prison sentence. Marsh appeals. Because the record supports the district court's findings that Marsh's violations were inexcusable and intentional and that the need for his confinement outweighs the policies favoring probation, we affirm.

FACTS

In early 2017, Marsh pleaded guilty to first-degree methamphetamine manufacturing in exchange for the dismissal of another charge and the staying of a 117-month prison sentence on the condition that he complete drug treatment and avoid consuming drugs, among other things.

Marsh failed the conditions almost immediately. In April 2017 he left the treatment facility and when police picked him up, he attempted to falsify a urine test using toothpaste. The state sought an order executing Marsh's sentence, adding that Marsh had been charged with smuggling Suboxone, a controlled substance, into the treatment facility. Marsh admitted that he used Suboxone. The district court continued the proceedings without revoking Marsh's probation.

Soon the district court considered three alleged violations: failing to abstain from drugs, leaving the treatment facility, and failing to submit to urinalysis. Marsh admitted to the first violation, “the facts of [the second violation], but not intent,” and denied the third. The district court found that Marsh violated his probation by failing to abstain from drugs. But before the district court could decide whether to revoke Marsh’s probation, he faced another violation for failing to take prescribed medications. The district court then found that Marsh intentionally and inexcusably violated probation on all the allegations. But it reinstated Marsh’s probation, cautioning that doing so might have been “against [the court’s] better judgment” because it believed Marsh was mentally ill and severely addicted.

Six months later, Marsh faced four additional violations: failing to follow through with treatment-aftercare requirements, failing to report to the probation office, failing to submit to random testing, and failing to remain law abiding. The district court found that all of these violations were intentional and inexcusable and that the need for Marsh’s confinement outweighed the policies favoring probation. The district court revoked Marsh’s probation, and Marsh appeals.

D E C I S I O N

Marsh appeals from the district court’s decision to revoke his probation and execute his stayed 117-month prison sentence. Marsh argues first that the district court did not properly find that any of his probation violations were intentional or inexcusable. He argues second that the district court did not properly find that the need for his confinement outweighed the policies favoring probation. We will not reverse unless the district court clearly abuses its broad discretion in determining that there is sufficient evidence to revoke

probation. *State v. Austin*, 295 N.W.2d 246, 249–50 (Minn. 1980). We review de novo whether the district court has made legally required findings. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

Marsh contends only that the district court failed to properly find, and the evidence did not prove, that his violations were intentional or inexcusable and that the need for his confinement outweighs the policies favoring probation. A district court must make three findings on the record before revoking a defendant’s probation: that the defendant violated a specific probation condition or conditions; that “the violation was inexcusable or intentional;” and that “the need for confinement outweighs the policies favoring probation.” *Id.* at 606. Marsh’s challenge focuses on the second and third required findings.

Marsh contends that the district court’s finding that his violations were inexcusable was based on a mistake of fact and therefore clearly erroneous. The district court seems to have based its conclusion that Marsh’s violations were inexcusable at least in part on its finding that Marsh lied to his psychiatrist about his history of heroin abuse. Marsh contends that the district court was mistaken, pointing to the portion of his psychiatrist’s report that Marsh identified “street opioids” and “prescription opioids” as drugs he abused. But Marsh admitted that he did not fully divulge the history and extent of his heroin abuse. At the hearing on Marsh’s first set of probation violations, the district court raised its concern that Marsh had failed to discuss his lengthy history of heroin abuse with his psychiatrist. Marsh admitted, “Your Honor, it just didn’t come up at the time. That was my first meeting with him, and I was nervous and anxious, and I was – I just wasn’t recalling everything at that time, you know, like that – I’ve been a Heroin addict for 13 years, since 11 years old. And

that's the truth." Marsh's admission to withholding information about his lengthy heroin addiction supports the district court's finding that he lied about the extent of it. This defeats Marsh's contention.

Marsh argues next that the district court did not respond specifically to his stated excuses in its findings of fact. The district court's duty to revoke probation only after finding that the violation is inexcusable does not on its face include a duty to particularly discuss every excuse offered for each alleged probation violation, and Marsh fails to identify any legal authority imposing the duty. Most of Marsh's excuses revolved around his suggestion that he had a difficult time complying with his probation conditions due to his impoverishment. The district court generally rejected Marsh's representations as not credible by rejecting Marsh's assertion that he was genuinely interested in completing treatment. The record amply supports the district court's finding that Marsh's violations were inexcusable because he did not have a genuine interest in completing treatment. As such, the finding does not reflect an abuse of discretion.

Marsh suggests that the district court reflexively found his violations inexcusable. *See Modtland*, 695 N.W.2d at 608; *Austin*, 295 N.W.2d at 251 (prohibiting reflexive revocation based on technical violations). But the district court's findings focus on Marsh's chronic inability to avoid drugs or complete treatment, which are the central features of his probation rather than mere technical components. The district court observed that Marsh's crime and his probation violations arose from his continued addiction. It then inferred that Marsh would continue in drug-related misconduct on probation. Marsh has not shown that the district court either acted reflexively or based its decision on mere technical violations.

Marsh also argues that the evidence did not indicate that confinement was necessary to protect the public. Imprisonment following a probation violation should occur only if “the court finds on the basis of the original offense and the intervening conduct of the offender” that the offender’s confinement is necessary for any of three reasons: the public needs protection from the offender’s future criminal activity, the offender needs correctional treatment that can most effectively be provided in a confined setting, or the offender’s remaining in the community “would unduly depreciate the seriousness of the violation.” *Modtland*, 695 N.W.2d at 607 (quotation omitted). The record easily supports the first two bases. Marsh’s continued drug-related conduct on probation demonstrated plainly that he presented a risk of more criminal conduct. The record of Marsh’s repeated misconduct also supports, if not compels, the district court’s finding that he needs the discipline of *correctional* treatment specifically.

Marsh argues more persuasively that the district court misapplied the third ground for revoking probation in its finding that allowing him to continue on probation “would unduly depreciate the seriousness of the *violation*.” *Id.* (quoting *Austin*, 295 N.W.2d at 251) (emphasis added). We find some support for Marsh’s contention that the district court focused on the seriousness of the underlying crime rather than the seriousness of his violations:

And I have to consider all of the urgings that [Marsh] has put forth in his arguments. But whether probation in that case would duly depreciate the seriousness of the violations and I think also the underlying charge if probation were not revoked. Remember this was a -- this [is] a committed case. This is something that our legislature has passed judgment on and said that people that have convictions like this should go to prison.

That they must unless there is reasons, very compelling reasons, not to. It's presumed that Mr. Marsh should have gone to prison the first time and the second time, which this Court decided not to, over the strenuous objection if I am not mistaken, by both probation and by the State. And I extended another opportunity. In retrospect, [the prosecutor] puts it pretty good when he says we spent a lot of money on thing[s] and we have gone nowhere. And I agree.

Although the district court did discuss the revocation in the context of the underlying offenses, the district court also clearly had the violations themselves under consideration as reflected in its statement, "But whether probation in that case would duly depreciate the seriousness *of the violations* and I think also the underlying charge if probation were not revoked." (Emphasis added). If the district court had revoked on the seriousness of Marsh's underlying crime alone, it would have abused its discretion. We are satisfied that this did not occur.

The district court did not abuse its discretion by revoking Marsh's probation.

Affirmed.