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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1888**

James Leon Nordrum, Jr., petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed December 16, 2019
Affirmed
Cochran, Judge**

St. Louis County District Court
File No. 69DU-CR-12-1013

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

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

Mark S. Rubin, St. Louis County Attorney, Jessica J. Fralich, Assistant County Attorney, Duluth, Minnesota (for respondent)

Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

COCHRAN, Judge

Appellant James Leon Nordrum Jr. challenges the postconviction court's denial of his petition to reverse a probation revocation and reinstate probation. The district court

revoked Nordrum's probation, in part, based on new criminal charges of fleeing a peace officer. Because the district court did not abuse its discretion in denying Nordrum's postconviction petition, we affirm.

FACTS

In 2012, appellant James Leon Nordrum Jr. pleaded guilty in Saint Louis County District Court to kidnapping. The district court granted Nordrum's motion for a downward dispositional departure and stayed the presumptive 68-month sentence for ten years. One condition of his probation was to remain law abiding.

In June 2016, Nordrum's probation officer filed a probation-violation report alleging that Nordrum had failed to report to probation and had missed a number of appointments with probation. In July 2016, the probation officer filed an amended violation report alleging that Nordrum had failed to remain law abiding because he was charged in Carlton County with fleeing a peace officer. *See* Minn. Stat. § 609.487 (2014).

The Saint Louis County District Court held a contested revocation hearing on the probation violation allegations before the Carlton County fleeing charge was resolved. At the revocation hearing, Nordrum admitted that he did not maintain contact with probation but denied that he fled from police. The state called the officer involved in the fleeing incident. The officer testified that he saw Nordrum, whom he knew from prior contacts, in a parking lot. The officer made eye contact with Nordrum. The officer then checked to see if there was an active warrant for Nordrum's arrest. Immediately after the officer discovered that there was an active warrant, Nordrum put a helmet on and drove away on a motorcycle. The officer followed him for a short time, and then activated his emergency

lights and began recording a video of the incident. The video shows that Nordrum looked back, sped up, and ran through multiple stop signs.¹ The officer testified that Nordrum was driving at least 100 miles per hour. The officer terminated his pursuit for safety reasons. He testified that he had no doubt that it was Nordrum on the motorcycle. Nordrum did not testify or present any evidence at the revocation hearing, but argued that it was not him on the video.

The district court issued written findings that Nordrum had fled the officer on the motorcycle and therefore intentionally and inexcusably violated the condition of probation that he remain law abiding. At a dispositional hearing, the district court found that based on the multiple probation violations, the need for Nordrum to be confined outweighed the policies favoring continued probation. The district court also found that Nordrum posed an ongoing risk to public safety based on the evidence that he fled a police officer. The district court revoked Nordrum's probation and executed the 68-month sentence.

In August 2018, Nordrum filed a petition for postconviction relief challenging the district court's decision to revoke probation. Nordrum argued that the decision should be reversed because the state dismissed the Carlton County fleeing charge after his probation was revoked. Nordrum expressly stated in the petition that he did not request an evidentiary hearing and submitted the petition based on the existing record and other supporting documents filed with the petition. The postconviction court denied Nordrum's petition,

¹ Because Nordrum had a helmet on, the video does not show Nordrum's face.

concluding that the fact that the fleeing charge was later dismissed did not undermine the district court's finding that Nordrum had failed to remain law abiding.

Nordrum appeals the postconviction court's denial of his petition.

D E C I S I O N

I. The postconviction court did not abuse its discretion in denying Nordrum's petition.

Nordrum argues that the district court erred in denying his postconviction petition. Appellate courts review the denial of a postconviction petition for an abuse of discretion. *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015). "We review legal issues de novo, but on factual issues our review is limited to whether there is sufficient evidence in the record to sustain the postconviction court's findings." *Id.* (quotation omitted). "We will not reverse an order unless the postconviction court exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings." *Id.* (quotation omitted).

Nordrum's postconviction petition challenged the district court's decision to revoke probation. Before revoking probation, the district court must make findings that the defendant violated a specific condition of probation, that the violation was intentional or inexcusable, and that the need for confinement outweighs the policies favoring probation. *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). The state is not required to prove a probation violation beyond a reasonable doubt—only clear and convincing evidence (a lesser burden of proof) is required. *See State v. Ehmke*, 400 N.W.2d 839, 840 (Minn.

App. 1987). The district court has broad discretion in determining if there is sufficient evidence to revoke probation. *Austin*, 295 N.W.2d at 249.

Nordrum argues that the postconviction court erred in denying his postconviction petition because, considering the state's dismissal of the fleeing charge, the record does not support the district court's finding that Nordrum failed to remain law abiding. We disagree. The district court's findings following the revocation hearing are supported by clear and convincing evidence in the record. The police officer's testimony and the video depicting the incident are undoubtedly sufficient to support the district court's finding that Nordrum fled from the officer and therefore violated the condition of probation that he remain law abiding. The mere dismissal of the underlying fleeing charge does not undermine the district court's findings. Considering the sufficiency of the evidence introduced at the revocation hearing, we find no clear error in either the postconviction court's or the district court's findings of fact and no error of law in the postconviction court's denial of the petition.

Nordrum further argues that the district court erred in denying the petition without first conducting an evidentiary hearing, despite his express indication that he was not requesting an evidentiary hearing. A court must hold an evidentiary hearing on a postconviction petition "[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2016). We review a postconviction court's decision to not hold an evidentiary hearing for an abuse of discretion. *Swaney v. State*, 882 N.W.2d 207, 214 (Minn. 2016). Assuming that Nordrum did not waive an evidentiary hearing by expressly requesting that

no evidentiary hearing be held, we conclude that the postconviction court did not abuse its discretion in not holding an evidentiary hearing. The only evidence Nordrum presented in support of his petition was an affidavit that denied that he was the person who fled on the motorcycle and a copy of the state's dismissal of the Carlton County matter. As discussed above, this evidence does not undermine the district court's findings regarding the probation revocation. Thus, the petition and the record conclusively showed that Nordrum was not entitled to relief and no evidentiary hearing was required.

Finally, Nordrum argues that the postconviction court erred in denying his petition because the record does not support the district court's finding that the need for confinement outweighs the policies favoring probation. We again disagree. In determining whether the need for confinement outweighs the policies favoring probation, the district court should consider whether "confinement is necessary to protect the public from further criminal activity by the offender," whether "the offender is in need of correctional treatment which can most effectively be provided if he is confined," or whether "it would unduly depreciate the seriousness of the violation if probation were not revoked." *State v. Modtland*, 695 N.W.2d 602, 607 (Minn. 2005) (quotations omitted). The district court found that the need for confinement outweighed the policies favoring probation because Nordrum's multiple violations demonstrated that he was not amenable to probation and because the fleeing incident demonstrated that he was an ongoing risk to public safety. Nordrum's argument on this point assumes that the postconviction court erred in not reversing its finding that Nordrum failed to remain law abiding, which we reject. Instead, we conclude that the district court's findings are well-supported by the evidence introduced

at the probation revocation hearing and therefore that the postconviction court did not abuse its discretion in denying the petition over this argument.

II. We do not address Nordrum’s claims of newly discovered evidence.

In his reply brief, Nordrum raises for the first time a claim of newly discovered evidence—a disclosure by the state that the officer who testified at the revocation hearing had been previously disciplined by the police department. Nordrum moved this court for a stay of appeal for further proceedings based on the newly discovered evidence. We denied the motion, noting, “[t]he arguments raised in appellant’s supplemental brief and reply brief concerning the state’s disclosure of the disciplinary records of the testifying police officer are based upon matters not part of the record on appeal and are not properly before this court. Accordingly, this court will not address these arguments in the disposition of this appeal.” We reiterate here that the issue is not properly before this court and do not address the argument.

III. Nordrum’s pro se claims are not properly before this court.

Nordrum also submitted a supplemental pro se brief that: challenges his kidnapping conviction from 2012; alleges ineffective assistance of counsel of the attorneys who represented him at his plea hearing, revocation hearing, and in the postconviction matter; and asserts purportedly newly discovered evidence establishing an alibi for the fleeing incident. But a postconviction petitioner may not raise issues for the first time on appeal. *Taylor v. State*, 910 N.W.2d 35, 38 (Minn. 2018). None of Nordrum’s pro se claims are properly before this court because, among other reasons, Nordrum did not raise any of them

in his postconviction petition. Consequently, we do not address the arguments contained in Nordrum's pro se supplemental brief.

Affirmed.