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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0895**

State of Minnesota,
Respondent,

vs.

Manuel Christopher Ramat,
Appellant.

**Filed March 2, 2020
Affirmed
Reyes, Judge**

Anoka County District Court
File No. 02-CR-17-5014

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

Anthony C. Palumbo, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Larkin, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

REYES, Judge

Appellant argues that the district court abused its discretion by revoking his probation following his termination from sex-offender treatment because (1) the record

does not support its findings that (a) he intentionally violated his probation and (b) the need for confinement outweighed the policies favoring probation and (2) it found and relied on a violation not alleged in the probation-violation report. We affirm.

FACTS

In August 2017, respondent State of Minnesota charged appellant Manuel Christopher Ramat with first- and second-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(a) (2016), and 609.343, subd. 1(a) (2016), respectively. Appellant pleaded guilty to the first-degree offense. He admitted to performing oral sex for approximately ten minutes on his then-girlfriend's 12-year-old daughter. Appellant was 33 years old at the time. In exchange for his guilty plea, the state agreed to drop the second-degree charge and to support a downward dispositional departure based on appellant taking responsibility for the offense and relieving the victim from testifying.

At appellant's sentencing hearing in March 2018, the state informed the district court that it expected appellant to "follow every single condition of the plea agreement" and if he did not, it would ask for execution of his sentence. Before accepting appellant's plea, the district court stated,

This is a very distasteful plea agreement that we agreed to And the reason that we're doing it and the reason I agreed to it was for the victim. . . . [O]ther than that, there's nothing really supporting a departure, but, of course, that piece with the victim is huge.

The district court reiterated to appellant that "[t]he state is going to expect perfection" and cautioned that "any slipups, [the state] has indicated [it] will ask that we execute the sentence and send you to prison. There's no leeway on this one. There just isn't." The

district court accepted appellant's plea, dismissed the second-degree offense, and convicted appellant of the first-degree offense. It imposed a stayed sentence of 201 months and 30 years of probation, with 365 days in local jail. Appellant's probation had more than 20 conditions, including remaining law abiding, submitting to random urinalysis testing, and entering into and completing sex-offender treatment.

Appellant admitted to violating his probation by testing positive for marijuana three times from August 2018 to October 2018. Rather than bringing appellant to the district court for this violation, his probation officer allowed him to sign a sanction agreement, under which appellant agreed to complete a chemical-dependency (CD) evaluation within 30 days and to follow its recommendations. Appellant completed the evaluation but did not enter CD treatment as the evaluation directed.

Appellant entered sex-offender treatment at Alpha Human Services (Alpha) and attended its program orientation in October 2018. Alpha expects its clients to attend every group session and not arrive more than 20 minutes late, provide 24-hour notice to miss a session or pay a \$30 fee, and take only one excused absence every three months. Grant-funded clients, such as appellant, must pay a \$20 or \$30 copay before attending each session. In extenuating circumstances, clients may miss a payment and pay it at the next session if their balance does not exceed \$40.

Appellant missed his sex-offender-treatment session on December 1, 2018, stating he forgot about it, as well as a rescheduled session on December 8, 2018, again stating he forgot about it. He arrived more than three hours late for his next session on December 14, 2018, but his therapist accommodated him. Next, on December 15, 2018, he arrived 30

minutes late for a group session and did not have his copay, so he could not attend. He was already on a payment plan for the fees from his prior missed sessions.

Appellant's therapist considered terminating him from treatment, but decided to give him one more opportunity after consulting with his probation officer. The therapist communicated this to appellant, including the expectation that he attend his next group session on December 29, 2018, and appellant agreed.

Appellant called Alpha the morning of his group session but did not arrive to the session. His therapist later learned that appellant and his landlord, who had paid his copay, called during the session to say that appellant's bus was running late but that he would be there soon. They both later called to say that appellant had taken an Uber, ordered by his landlord, to the wrong location. His landlord said she entered the incorrect destination based on appellant's direction of where to find Alpha's address. Appellant's therapist called appellant thereafter, reminded him about the expectations they had discussed, and told him that Alpha is terminating him from the program.

Anoka County Corrections filed a probation-violation report on January 14, 2019, recommending revocation of appellant's probation. The district court held a probation-violation hearing in March 2019. It found appellant's violations "willful and intentional" and revoked his probation. The district court concluded by stating that:

Mr. Ramat, the underlying crime is obviously one that is very serious. This court has . . . serious concerns about public safety based on the violations in this matter. As [the state] indicated and I said earlier, you had the ability to obtain employment, to make arrangements to get to that employment, but yet when it came to the treatment program that you were ordered to participate in, that did not become a priority and you

did not attend that program. And at this point I just think the need for confinement outweighs the policies favoring probation.

The district court executed appellant's 201-month sentence. This appeal follows.

DECISION

We give broad deference to a district court's determination that there is sufficient evidence to revoke probation. *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). A district court may revoke probation "[w]hen it appears that the defendant has violated any of the conditions of probation or intermediate sanction." Minn. Stat. § 609.14, subd. 1(a) (2018). But its decision must not be "a reflexive reaction to an accumulation of technical violations." *Austin*, 295 N.W.2d at 251 (quotation omitted).

I. The district court did not abuse its discretion by determining that appellant intentionally violated probation and that the need for confinement outweighed the policies favoring probation.

Appellant argues that the district court abused its discretion by determining that (1) he willfully and intentionally failed to attend treatment sessions and (2) the need for confinement outweighed the policies favoring probation. We disagree.

In revoking probation, the district court must (1) specify the condition or conditions that the probationer violated; (2) find that the probationer intentionally or inexcusably violated the condition; and (3) "find that [the] need for confinement outweighs the policies favoring probation." *Id.* at 250. Appellant challenges only the district court's findings on factors two and three. A district court may base its *Austin* findings on the original offense and the probationer's intervening conduct. *State v. Modtland*, 695 N.W.2d 602, 607 (Minn.

2005) (citing *Austin*, 295 N.W.2d at 251). It must provide substantive reasons and the evidence upon which it relied in making its findings. *Id.* at 608.

Under the second *Austin* factor, a probation violation is unintentional or excusable and may not justify revocation if it occurs “through no fault of [the probationer’s] own,” such as when an indigent probationer cannot pay fines or restitution. *See State v. Cottew*, 746 N.W.2d 632, 636 (Minn. 2008) (quotation omitted); *see also Bearden v. Georgia*, 461 U.S. 660, 668-69 n.9, 103 S. Ct. 2064, 2070-71 n.9 (1983). Appellant argues that neither the record nor the district court’s reasoning supports the finding that his violation was “willful and intentional.” He argues that he tried everything to attend the December 29, 2018 session and that his failure to attend and his subsequent termination from sex-offender treatment were not willful.

In finding appellant’s violation willful, the district court considered appellant’s explanation that he missed his first two treatment sessions because he forgot about them in light of his probation officer’s testimony that he and appellant discussed the December 1 session just three days before it. Appellant did not provide any explanation for arriving 30 minutes late to his December 15 session. The district court contrasted appellant’s difficulty in getting to his treatment sessions, which were “a number one priority” of his probation, with his apparent ability to get to and from work. The record supports the conclusion that appellant’s failure to attend sex-offender treatment, and his subsequent termination from it, did not occur “through no fault of his own.” *See Cottew*, 746 N.W.2d at 636.

For the third *Austin* factor, district courts “must balance ‘the probationer’s interest in freedom and the state’s interest in insuring his rehabilitation and the public safety,’ and

base their decisions ‘on sound judgment and not just their will.’” *Modtland*, 695 N.W.2d at 607 (quoting *Austin*, 295 N.W.2d at 250-51). Within the third factor, district courts “should refer to” whether “(i) confinement is necessary to protect the public,” “(ii) the offender is in need of correctional treatment which can most effectively be provided if he is confined,” or (iii) not revoking probation “would unduly depreciate the seriousness of the violation.” *Id.* (quoting *Austin*, 295 N.W.2d at 251).

Appellant argues that the district court did not indicate which facts it relied upon in reaching its conclusion, that this is only “his second violation and the first to result in a hearing,” and that the district court did not make findings on all of the “subfactors” in the third *Austin* factor.

First, the district court is not required to make findings on all of the considerations under the third *Austin* factor. *See id.* (quoting statement in *Austin* that district courts “should refer to” these considerations, which are linked by “or”). Second, the district court discussed the seriousness of the underlying offense and stated it had “serious concerns about public safety based on the violations.” Appellant’s failure to attend his sex-offender-treatment sessions further supports a finding that his treatment would be provided most effectively if he were confined instead of in the community. While “policy considerations may require that probation not be revoked even though the facts may allow it,” that is not the case here. *See Austin*, 295 N.W.2d at 250-51 (concluding revocation required when appellant failed to take advantage of CD treatment or show commitment to it). The district court provided substantive reasons for its findings on each of the *Austin* factors and

discussed the evidence on which it relied. It therefore did not abuse its discretion by revoking appellant's probation.

II. The district court did not abuse its discretion by finding and relying on a violation that probation did not allege as a new violation.

Appellant argues that the district court abused its discretion because it relied on his failure to enter CD treatment as a violation, which probation did not allege as a new violation and of which he therefore lacked notice. We disagree that the district court relied on this as a violation.

A probationer must be "given written notice of the alleged grounds for revocation." *Id.* at 252. The notice need not be the "best possible," but it must be "adequate to warn the appellant of the issues that could come up at the hearing." *See id.* at 252 n.1.

Appellant's probation-violation report listed his discharge from sex-offender treatment before completion as the "alleged violation." A section on "prior violations" highlighted his earlier violation of testing positive for marijuana, and both that section and the "comments/adjustments" section stated that he had not entered CD treatment as his CD evaluation recommended two weeks earlier. At the start of his revocation hearing, appellant's counsel agreed that the district court would consider "[a]nything else in the record."

The district court stated that appellant's termination from sex-offender treatment was the "big violation." It described his failure to enter CD treatment as the "other piece," but it concluded its bench ruling by emphasizing only appellant's failure to attend sex-

offender treatment. Appellant's violation of being terminated from sex-offender treatment alone provided sufficient grounds for revocation.

Appellant cites to no authority limiting a district court to consideration of only the facts in the "alleged violation" section of a probation-violation report, and we can find none. *See* Minn. R. Crim. P. 27.04 (describing procedural requirements for probation revocation). Nonetheless, because we conclude that the district court relied on appellant's termination from sex-offender treatment as his violation, and that alone provides sufficient grounds for revocation, we need not decide whether a district court may revoke probation based on a violation not listed in the "alleged violation" section of a probation-violation report. The district court did not abuse its discretion by referencing appellant's failure to enter CD treatment when revoking his probation.

Affirmed.