

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-0959**

State of Minnesota,  
Respondent,

vs.

Casey Belden Hoskins,  
Appellant.

**Filed April 6, 2020  
Affirmed in part and reversed in part  
Rodenberg, Judge**

Carver County District Court  
File No. 10-CR-17-1184

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

Mark Metz, Carver County Attorney, Angella M. Erickson, Assistant County Attorney,  
Chaska, Minnesota (for respondent)

Paul F. Shoemaker, Shoemaker & Shoemaker, PLLC, Bloomington, Minnesota (for  
appellant)

Considered and decided by Rodenberg, Presiding Judge; Johnson, Judge; and  
Smith, Tracy M., Judge.

**S Y L L A B U S**

When a district court imposes an intermediate sanction of incarceration for a probation violation, the defendant is entitled to the statutory good conduct allowance under Minn. Stat. § 643.29 (2018) and shall not be prospectively deprived of that good conduct allowance.

## **O P I N I O N**

**RODENBERG, Judge**

Appellant Casey Hoskins appeals from a district court order upholding the revocation of his work-release privileges, finding that appellant violated a condition of his probation, and ordering intermediate sanctions for the probation violation. Appellant argues that (1) the state failed to prove by clear and convincing evidence that he violated a condition of his probation; (2) the district court abused its discretion by sentencing appellant to an additional year of incarceration as an intermediate sanction; and (3) the district court abused its discretion by denying appellant future allowance for good conduct under Minn. Stat. § 643.29. We affirm in part and reverse in part.

## **F A C T S**

Appellant killed J.S.L. by negligently driving a truck while he had a metabolite of cocaine in his system. On November 29, 2018, appellant pleaded guilty to one count of criminal vehicular homicide under Minn. Stat. § 609.2112, subd. 1(a)(6) (2016). Consistent with a plea agreement, the district court dispositionally departed from the Minnesota Sentencing Guidelines and stayed execution of a 48-month prison term. The district court ordered that appellant serve one year in the Carver County Jail with work-release privileges. Appellant was placed on supervised probation for ten years, with conditions of probation that included requiring that he complete a chemical-dependency assessment, follow the recommendations resulting from it, and “[f]ollow all rules of probation.”

Appellant reported to jail on January 15, 2019. He was allowed to participate in the Carver County Jail's work-release program, and was self-employed at the time and worked from an office in his home.

On April 15, 2019, appellant's work-release program supervisor, Corporal Johnson, completed an incident report which detailed that, on April 13, 2019, appellant ran in a 15 kilometer (15K) road race—not a work-release-approved activity—while he was released from jail to work. A jail hearing board determined that appellant had violated two jail rules: (1) giving false information to detention staff or a disciplinary hearing board and (2) unexcused tardiness or absence from work release. Appellant served 17 days in segregation for the two rule violations.

On April 25, 2019, Corporal Johnson completed a second incident report. The incident report explained that a Carver County detective listened to recordings of some of appellant's telephone calls from the jail, and determined from the conversations that appellant was "going to unauthorized places out in the community while he was supposed to be working." Among other unauthorized activities, the recorded conversations suggested that appellant went to a jewelry store to pick up a ring while on work release. A jail hearing board determined that appellant violated the terms of his work-release privileges and deemed appellant's "previously earned good conduct time" forfeited.

After the jail hearing board's decision, appellant met with Commander Ashpole to discuss the revocation of his work-release privileges. On May 2, 2019, Commander Ashpole informed appellant that he was reinstating appellant's previously earned good conduct time, but was revoking appellant's work-release privileges because of appellant's

noncompliance with jail rules. On May 6, 2019, appellant petitioned for district court review of the jail hearing board's decision.

On May 9, 2019, appellant's probation supervisor, Ms. Engelen, filed a probation violation report which alleged that appellant violated the terms of his probation by "fail[ing] to abide by work release conditions." The report cites appellant's unapproved participation in the 15K race.

On June 5, 2019, Ms. Engelen filed an addendum to the violation report which alleged an additional violation of probation—that appellant failed to complete a chemical-dependency evaluation.

On June 6, 2019, a consolidated hearing was held on appellant's appeal of the jail hearing board's decision to revoke his work-release privileges and on the claimed probation violations.

At the hearing, Deputy Dickison testified that appellant admitted to running in the 15K race. Corporal Johnson testified about the rules of work release and about the difficulties of supervising a self-employed person on work release.<sup>1</sup>

Ms. Engelen also testified concerning the allegations contained in her report and addendum. Ms. Engelen testified that she met with appellant for an intake meeting on

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<sup>1</sup> The record contains evidence that appellant ran the race using the alias "Barry Norman." After that duplicity was uncovered, appellant tried to tether his running in the race to work activity because he had been a race "sponsor." This claim was investigated and was determined to be a lie. Appellant was not a sponsor of the race. Although these lies were not a separate basis for any of the discipline the district court ultimately imposed, we think it worth mentioning in the entire context of appellant's belligerent and duplicitous approach to probation conditions resulting from his conviction for killing J.S.L.

March 27, 2019. Appellant had, by then, been in jail for over two months. Ms. Engelen testified that she and appellant “went over the probation agreement line by line,” that she “read him every condition,” and that appellant “was given the chance to ask . . . any questions before signing [the probation agreement].” Ms. Engelen testified that she discussed with appellant the expectation that the court-ordered chemical-dependency assessment be completed pursuant to the district court order “as soon as possible.” Ms. Engelen testified that she believed that appellant “knew [the chemical-dependency assessment] needed to happen as soon as possible because [she] wanted [appellant] to begin treatment if treatment was ordered while in jail.” Appellant declined to do the assessment while in the jail, because he thought jail staff “didn’t like him.” Ms. Engelen testified that, to her knowledge, appellant had not made any effort to obtain a chemical-dependency assessment as of the hearing date. He had not reported anything to her and had not provided her with evidence of having started the evaluation process. Ms. Engelen agreed that the condition of appellant’s probation that required him to obtain a chemical-dependency assessment did not have a specific deadline for completion. She nevertheless reported the failure to complete the condition imposed by the district court as a probation violation. She did not believe appellant has the “willingness or ability to follow the requirements of probation.” Based on her professional experience, Ms. Engelen opined that appellant had “taken advantage [of] and abused” his work-release privileges, and she testified that she did not believe that appellant was amenable to probation.

The district court affirmed the jail hearing board’s decision concerning work release. It revoked appellant’s work-release privileges, and revoked his good conduct

allowance both retroactively and prospectively.<sup>2</sup> Concerning the probation violations, the district court did not find that appellant violated a specific condition of probation by running in the 15K race. The district court reasoned that “there is no specific condition [of appellant’s probation] that says [appellant] must follow all terms and conditions of [his] work release.” But the district court found that appellant’s failure to complete a chemical-dependency assessment violated the terms and conditions of his probation. The district court explained that appellant not only failed to complete the chemical-dependency assessment between his sentencing on January 15 and his meeting with Ms. Engelen on March 27, but that “then [Ms. Engelen] made it abundantly clear to [appellant] that [he] needed to have that evaluation as soon as possible.” The district court found that appellant understood “that as soon as possible does not mean at [his] own convenience.”

The district court did not execute appellant’s stayed sentence for violating his probation. Instead, it ordered an intermediate sanction as follows:

I’m reinstating you on all original terms and conditions. You must complete the one year sentence that I have previously ordered with no work release, and no good time. In addition, I am sentencing you to an additional one year [consecutive to the one-year jail sentence appellant was serving] in the Carver County Jail. You are also not to avail yourself of work release. I’m specifically ordering that you be denied work release, and I’m specifically ordering that you get no good time for that one-year sentence.

This appeal followed.

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<sup>2</sup> The district court received approximately 20 victim-impact statements, which it read before issuing its ruling on the record. The district court also explained why it could not order some of the things that the victim-impact statements recommended.

## ISSUES

- I. Does the record support the district court's finding that the state proved by clear and convincing evidence that appellant violated a condition of his probation?
- II. Did the district court abuse its discretion by sentencing appellant to an additional year of incarceration as an intermediate sanction for his probation violation?
- III. Did the district court err by revoking appellant's future entitlement to a good conduct allowance under Minn. Stat. § 643.29?

## ANALYSIS

**I. The record supports the district court's finding that the state proved that appellant violated a condition of his probation.**

Appellant challenges the district court's finding that the state proved by clear and convincing evidence that appellant violated a condition of his probation by not timely completing a chemical-dependency assessment.

At a probation-revocation hearing, the state must prove a probation violation by clear and convincing evidence. Minn. R. Crim. P. 27.04, subd. 2(1)(c)b. "The clear and convincing evidence standard is met when the truth of the fact to be proven is highly probable." *Roby v. State*, 808 N.W.2d 20, 26 (Minn. 2011) (quotation omitted). The district court has "broad discretion" in determining if there is sufficient evidence whether a condition of probation has been violated. *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). When intermediate sanctions are imposed as a consequence for a probation violation, the three-step *Austin* analysis for revoking probation does not apply. *State v. Cottew*, 746 N.W.2d 632, 638 (Minn. 2008). Intermediate sanctions are entrusted to the district court's "broad discretion," provided that the procedural safeguards of rule 27.04 of the Minnesota Rules of Criminal Procedure are observed. *Id.*

“The imposition of sentences, including determining conditions of probation is exclusively a judicial function that cannot be delegated to executive agencies.” *State v. Ornelas*, 675 N.W.2d 74, 80 (Minn. 2004) (quotation omitted). The district court at sentencing must “[s]tate precisely the terms of the sentence.” Minn. R. Crim. P. 27.03, subd. 4(A). “[B]efore a probation violation can occur, the condition alleged to have been violated must have been a condition actually imposed by the court.” *Ornelas*, 675 N.W.2d at 80. A probationer must have a “fair warning” of which acts are prohibited by the probation conditions. *Id.* It is best practice for a probationer to be given “a written copy of the conditions of his probation.” *Austin*, 295 N.W.2d at 251. Where there is a plea agreement, it is also the best practice that the specific conditions intended to be imposed as part of the resulting sentence be clearly identified.

When a prior fair warning “is not contained in a formal condition, the record must be closely scrutinized to determine whether the defendant did, in fact, receive the requisite warning.” *Id.* (quotation omitted). Oral instructions given to a probationer by his probation officer may be a sufficient warning to a probationer of his conditions of probation. *See id.* “The boilerplate instruction that appellant follow his probation officer’s orders may be general but is necessary to give the probation officer some flexibility.” *Id.* Directions from a probation officer are sufficient if “[a] reasonable probationer would have understood” what was required of the probationer. *Id.* at 251-52.

At appellant’s sentencing, the district court told appellant that he was required to complete a chemical-dependency assessment as a condition of his probation. The printed sentencing order specified, as a condition of appellant’s probation, that he was required to

complete a chemical-dependency assessment and follow any resulting recommendations and to follow “all rules of probation.” The setting within which these probation conditions were imposed is significant. Appellant had successfully negotiated a downward dispositional sentencing departure after his criminal conduct killed J.S.L. He was, as a result, avoiding an executed prison sentence for having killed J.S.L. because of his decision to combine driving and drugs. Trying to keep appellant drug-free was a critical component of the negotiated plea agreement. We know this—and appellant knew it—because *other* conditions of the negotiated plea and resulting probation included that appellant not use or possess alcohol, not use or possess “non-prescribed controlled substances,” submit to testing for drugs or alcohol, and attend a victim-impact panel.<sup>3</sup>

At his March intake meeting with Ms. Engelen, appellant was told that he needed to complete the chemical-dependency assessment “as soon as possible.” Although no specific date for completion of the assessment was identified in the sentencing order, any reasonable probationer would have understood that “as soon as possible” does not mean “at the probationer’s leisure.”

Here again, context is important. Appellant was not reported as being in violation of this condition immediately after the March meeting with Ms. Engelen. Far from it. Despite having been told in March that the chemical-dependency assessment needed to be completed as soon as possible, appellant found the time to participate in a 15K race in April and to shop for jewelry when he was supposed to be released to work. These problems

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<sup>3</sup> Appellant had violated the no-use-of-chemicals provision of his pretrial release by having an alcohol concentration of 0.082 while he was at liberty before his guilty plea.

were brought to the district court's attention in early May in connection with the work-release violations, and still appellant did not complete or even arrange for the required evaluation. Finally, and on June 5, Ms. Engelen added failure to complete the assessment as an additional claimed probation violation. And instead of volunteering to immediately do the assessment, appellant argued to the district court only that he had not violated any "specific condition of the sentence." The assessment was, as Ms. Engelen had told appellant, available to be done in the jail. Appellant refused that option because, he said, jail staff "didn't like him." (Jail staff does not do the assessment; an employee of Northstar Regional Treatment Center is the assessor.) Appellant had ample time between his intake meeting with Ms. Engelen at the end of March and the probation violation hearing at the beginning of June to complete a chemical-dependency assessment either at the jail or in the community. It is evident from this record that he was refusing to do it.

The record supports the district court's finding that appellant violated his probation by failing to complete—or even start—the chemical-dependency evaluation within a reasonable time after having been advised by his probation agent to complete it as soon as possible.

**II. The district court did not abuse its discretion by sentencing appellant to an additional year of incarceration as an intermediate sanction for his probation violation.**

Appellant argues that, by ordering him to serve an additional year of incarceration as an intermediate sanction for a technical probation violation, the district court acted unreasonably.

“Intermediate sanctions are imposed when the district court has determined that the defendant has violated his probation but that revocation of the defendant’s probation and execution of the underlying sentence is not appropriate, at least in part, because rehabilitation is still possible.” *Cottew*, 746 N.W.2d at 637. “[B]ecause the district court . . . agrees that revocation is not warranted,” findings as required by *Austin* are not necessary. *Id.*; see *Austin*, 295 N.W.2d at 250-51 (explaining the findings that a district court must make before revoking probation). “[T]he term ‘intermediate sanctions’ includes but is not limited to incarceration in a local jail or workhouse . . . .” Minn. Stat. § 609.135, subd. 1(b) (2018). The district court has broad discretion in deciding to impose an intermediate sanction. *Cottew*, 746 N.W.2d at 638. A district court can impose additional jail time as an intermediate sanction for a violation of a condition of probation. Minn. Stat. § 609.135, subd. 1(b).

“[T]he imposition of intermediate sanctions for probation violations will be reviewed to determine whether the district court abused its discretion.” *Cottew*, 746 N.W.2d at 638. “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

Although the district court found what it described as a “flagrant” violation of a condition of probation, it chose not to execute appellant’s prison sentence. The district court reasoned that “send[ing] [appellant] to prison for not timely completing [his] chemical dependency evaluation” was not appropriate. The district court instead

determined that imposition of an intermediate sanction was a more appropriate remedy for appellant's violation.

Minnesota statutes allow the district court, as a condition of probation, to “require the defendant to serve up to one year incarceration in a county jail.” Minn. Stat. § 609.135, subd. 4 (2018). There is no statutory limit on “the cumulative amount of local jail time a district court may impose as a consequence of probation violations.” *State v. Johnson*, 743 N.W.2d 622, 626 (Minn. App. 2008). In the overall context of appellant's poor performance on probation, the district court's measured response in imposing an intermediate sanction instead of revoking appellant's probation was within its discretion. We see no abuse of that discretion by sentencing appellant to an additional year of jail time for violating a condition of his probation.

### **III. The district court erred by prospectively revoking appellant's future good conduct allowance.**

Appellant argued in his briefing on appeal that the district court erred by revoking both his previously earned good conduct allowance and any future good conduct allowance that he would earn. At oral argument, appellant withdrew his claim that the district court erred by revoking appellant's good conduct allowance for his initial one-year period of incarceration, because that time has already been served. Appellant maintains his challenge to the district court's prospective revocation of any good conduct allowance that he would earn on the second one-year jail term—the intermediate sanction.

The district court has discretion in sentencing, including discretion to place a person on probation, to revoke a person's probation, or to impose intermediate sanctions. *State v.*

*Soto*, 855 N.W.2d 303, 308 (Minn. 2014); *Cottew*, 746 N.W.2d at 636-38. We “reverse sentencing decisions only for an abuse of that discretion.” *Soto*, 855 N.W.2d at 307-08. We therefore review the district court’s decision to revoke appellant’s good conduct allowance for an abuse of discretion. If a district court misapplies the law, it abuses its discretion. *State v. Babcock*, 685 N.W.2d 36, 40 (Minn. App. 2004), *review denied* (Minn. Oct. 19, 2004).

Minnesota law provides for a “good conduct allowance” to reduce a person’s sentence.

Any person sentenced for a term to any county jail, . . . whether the term is part of an executed sentence or is imposed as a condition of probation, shall, when sentenced to serve ten days or more, diminish the term of the sentence one day for each two days served . . . during which the person has not violated any rule or discipline of the place wherein the person is incarcerated . . . .

Minn. Stat. § 643.29, subd. 1 (2018).

In response to a violation of a work-release condition, a “correctional facility administrator may require that the inmate spend the balance of the inmate’s sentence in actual confinement.” Minn. Stat. § 631.425, subd. 7 (2018). “On appeal . . . , the [district] court must review the facility administrator’s decision and, in its review, may (1) uphold or reverse the decision; and (2) order additional sanctions for the work release violation, including canceling any earned reduction in the [person]’s term and finding the [person] in contempt of court.” *Id.* “Earned reduction” is not further defined by the statute.

Cancellation of an “*earned* reduction,” *id.* (emphasis added), uses the past tense and therefore necessarily relates to a reduction already earned. “We must presume that [the]

legislature says in a statute what it means and means in a statute what it says there.” *Goodman v. Best Buy, Inc.*, 777 N.W.2d 755, 758 (Minn. 2010) (quotation omitted). Had the legislature intended to grant the district court the option of prospectively denying the good conduct allowance, it could and would have said so. It did not. We cannot add words to a statute that the legislature omitted. *Doran v. Indep. Sch. Dist. No. 720*, 831 N.W.2d 1, 5 (Minn. App. 2013).

The district court, when imposing an intermediate sanction of incarceration, is not authorized to prospectively deprive a defendant of the good conduct allowance under Minn. Stat. § 631.425. The statute makes mandatory a reduction in the duration of a person’s sentence subject only to the remedies expressed in section 643.425. *See* Minn. Stat. § 643.29, subd. 1 (stating that a term of imprisonment “shall . . . diminish the term of the sentence” except as provided by the statute). Prospective deprivation of the statutory good conduct allowance is not permitted.

The district court was understandably concerned with appellant’s demonstrated disdain for the conditions of his probation, but nevertheless misapplied the law by prospectively denying appellant the future good conduct allowance as the law requires for the intermediate sanction of one year in jail. Of course, if appellant continues to violate rules, his good conduct allowance may be “taken away” under Minn. Stat. § 643.29, subd. 2.

## **D E C I S I O N**

The district court did not err in finding, on this extensive record, that appellant violated a term of his probation. It did not abuse its discretion by ordering that appellant

serve one additional year of incarceration as an intermediate sanction for the probation violation. But the district court erred by prospectively denying appellant the good conduct allowance provided for under Minn. Stat. § 643.29, subd. 1. Appellant is entitled to the good conduct allowance on the second one-year incarceration period unless he commits additional rule violations during that period of incarceration.

**Affirmed in part and reversed in part.**