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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1075**

State of Minnesota,
Respondent,

vs.

Cody Lane Pedersen,
Appellant.

**Filed February 24, 2020
Affirmed
Segal, Judge**

Anoka County District Court
File No. 02-CR-17-3117

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

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Assistant County Attorneys, Anoka, Minnesota (for respondent)

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Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Segal, Judge; and Peterson,
Judge.*

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

UNPUBLISHED OPINION

SEGAL, Judge

Appellant challenges the revocation of his probation, arguing that the evidence in the record does not support the district court's conclusion that he intentionally or inexcusably violated the conditions of probation and that the need for confinement does not outweigh the policies favoring probation. We affirm.

FACTS

In March 2017, the district court issued a domestic-abuse no-contact order (DANCO) that prohibited appellant Cody Lane Pedersen from contacting K.R. after Pedersen was arrested and charged with domestic assault of K.R. Pedersen was incarcerated at the Anoka County jail. While incarcerated, Pedersen called K.R. and violated the DANCO on numerous occasions. During one phone call, Pedersen allegedly threatened to kill K.R. As a result, respondent State of Minnesota charged Pedersen with making threats of violence and violating the DANCO. The state later amended the complaint to add four additional counts of violating the DANCO.

On February 27, 2018, the parties appeared for a plea hearing. The parties indicated they had reached a plea agreement in which Pedersen agreed to plead guilty to three counts of violating the DANCO and the state agreed to dismiss the remaining charges. The state also agreed to recommend that Pedersen receive a dispositional departure from the presumptive executed sentence and be placed on probation. The district court accepted the guilty plea with respect to three counts of violating the DANCO and dismissed the remaining charges. The district court sentenced Pedersen to three consecutive sentences

of 36 months, 12 months and a day, and 12 months and a day, but stayed execution of the sentences. The district court placed Pedersen on probation and ordered him to submit to a chemical-dependency evaluation, complete domestic-abuse programming, submit to urinalysis (UA) as directed, follow the rules of probation, and remain law-abiding and of good behavior.

On March 18, 2019, the state filed a probation-violation report. The report alleged five probation violations: failure to submit to UAs as directed, failure to complete domestic-abuse programming, failure to remain law-abiding and of good behavior, failure to abstain from mood-altering chemicals, and failure to contact probation as directed. On April 16, the district court held a probation-revocation hearing. His probation officer testified and recommended that Pedersen's probation be revoked. She stated that, during her time supervising Pedersen's probation, Pedersen did not demonstrate amenability to probation and that his behavior "demonstrated blatant disregard for the Court-ordered conditions and unwillingness to comply with probation supervision." She testified that he missed multiple UAs, failed a recent UA by testing positive for marijuana, frequently rescheduled meetings, did not complete domestic-abuse programming, and violated the condition that he remain law-abiding and of good behavior because he had an order for protection (OFP) issued against him in Kanabec County on behalf of his former girlfriend and their minor children.

The district court revoked Pedersen's probation and executed his sentences. The district court determined that Pedersen violated the conditions of probation, the violations

were intentional and inexcusable and the need for confinement outweighed the policies favoring probation. This appeal follows.

DECISION

The district court has broad discretion in determining whether sufficient grounds exist to revoke probation. We will reverse only if there is a clear abuse of that discretion. *State v. Austin*, 295 N.W.2d 246, 249-250 (Minn. 1980). When revoking probation, a district court must (1) specify the conduct or conditions that the probationer violated, (2) find the violation was intentional or inexcusable, and (3) find that the need for confinement outweighs the policies favoring probation. *Id.* at 250. The district court's decision to revoke probation "cannot be a reflexive reaction to an accumulation of technical violations but requires a showing that the offender's behavior demonstrates that he . . . cannot be counted on to avoid antisocial activity." *Id.* at 251 (quotations omitted).

When analyzing the third factor, a district court must consider that the purpose of probation is rehabilitation; revocation should be a last resort. *State v. Modtland*, 695 N.W.2d 602, 606 (Minn. 2005). The need for confinement outweighs the policies favoring probation if at least one of three subfactors is met:

- (i) confinement is necessary to protect the public from further criminal activity by the offender; or
- (ii) the offender is in need of correctional treatment which can most effectively be provided if he is confined; or
- (iii) it would unduly depreciate the seriousness of the violation if probation were not revoked.

Austin, 295 N.W.2d at 251.

Pedersen first argues that the district court's determination that he violated the conditions of probation was not supported by facts in the record. He argues that the district court abused its discretion by determining he violated the requirement that he remain of good behavior based on the issuance of the OFP in Kanabec County. He acknowledges that the rules of evidence do not apply in probation-revocation hearings, Minn. R. Evid. 1101(b)(3), and that the OFP was admissible as evidence, but argues that the district court nonetheless erred in relying on the OFP because it is unreliable hearsay. He emphasizes that the OFP was issued after a default hearing and, thus, claims he did not have the opportunity to present evidence to refute the allegations. But as the state notes, Pedersen was served with the notice of hearing for the OFP and made a choice not to attend. The OFP explicitly states that Pedersen "had reasonable notice and opportunity to be heard." Accordingly, Pedersen did have an opportunity to be heard and present evidence, but he forfeited that opportunity by not attending the hearing.

Pedersen also argues the OFP does not contain a finding that supports the district court's determination he committed an assault while on probation. He asserts that "the only reference to assaultive behavior in the OFP" was the allegation that Pedersen committed previous acts of violence against the petitioner in 2010 and 2013. A review of the OFP refutes this argument. Paragraph 4(a) of the OFP contains a finding that acts of domestic abuse occurred, including "threats of harm and/or death to petitioner and her minor children" and "assault and battery against petitioner." A separate notation is set out in paragraph 4(c) referring to the prior OFPs and previous acts of violence against the petitioner. The conclusion in the order, however, is that Pedersen posed "an imminent

risk” of causing harm to the petitioner and the minor children and, thus, the OFP does not appear to have been based solely on the previous assaults.

Pedersen next argues that the district court abused its discretion by finding that the probation violations were intentional and inexcusable. He specifically argues that the record does not support the finding that Pedersen’s failure to complete domestic-abuse programming was intentional and inexcusable. He acknowledges that his “lack of diligence could be considered inexcusable,” but that “it is not also intentional” because the “the record is clear that Pedersen was trying to enter domestic abuse counseling” but had difficulties with his insurance. We disagree. The record amply supports the district court’s determination that Pedersen both intentionally and inexcusably violated the condition that he complete domestic-abuse programming as directed by his probation officer.

Pedersen was sentenced on February 27, 2018, and at the time of the probation-revocation hearing on April 16, 2019, had not even started the mandated domestic-abuse programming. In April 2018, the probation officer met with Pedersen to discuss the conditions of his probation and “went step by step with him” through what he needed to do to enroll in domestic-abuse programming. In August 2018, she contacted him about his failure to enroll in domestic-abuse programming, gave him another referral sheet, and directed him to enroll in programming by their September 15 meeting. Pedersen did not enroll in programming, missed the September 15 meeting, and called his probation officer two weeks later only to tell her that he still had not enrolled in programming. On October 11, he informed her that he had discovered his medical insurance was expired and that he was working on getting it reinstated. The record indicates that Pedersen was able to resolve

the issue with his medical insurance relatively quickly and that, even after it was reinstated, he failed to begin programming.

The record also contains testimony from the probation officer that Pedersen displayed a defiant attitude about the domestic-abuse program requirement during his time on probation. She testified that at his first meeting with her he was “argumentative and oppositional” about having to complete the probation conditions. She characterized his attitude and behavior while on probation as demonstrating “blatant disregard for the Court-ordered conditions and unwillingness to comply with probation supervision.” She also stated that the condition that he complete domestic-abuse programming was “the subject of every office visit.” She explicitly directed him to enroll in the programming by September 15, 2018, and, at the time of the probation-revocation hearing seven months later, he had yet to do so. This supports the district court’s determination that Pedersen both intentionally and inexcusably failed to comply with the requirement that he complete domestic-abuse programming as directed by probation.

Finally, Pedersen argues that the record does not support the determination that the need for confinement outweighs the policies favoring probation. The district court found that the need for confinement outweighed the policies favoring probation because confinement was necessary to protect the public, that it would unduly depreciate the seriousness of the violation if probation were not revoked and there were no less-restrictive alternatives available. Pedersen argues that nothing about the circumstances of his case demonstrated that revocation outweighs the benefit of continued probation. When addressing the violations, the district court stated:

Most problematic to me is the lack of domestic abuse programming. That was your biggest priority for probation, and here we are a year later, and you have done nothing. I know you had barriers on your insurance issues. Those barriers were created in part by yourself. You certainly could have been more diligent about ferreting that out, and you have done nothing since January, early January, to try to get yourself back into that domestic abuse counseling.

Based on this assessment and his probation officer's testimony that Pedersen demonstrated a blatant disregard for complying with the conditions of probation and had "not given corrections anything to work with over the past year," we conclude the district court did not abuse its discretion by determining the need for confinement outweighed the policies favoring probation. Despite being given a downward dispositional departure, Pedersen made very little effort to comply with the conditions of probation and failed to complete or even start domestic-abuse programming, which the district court identified as the "biggest priority" on probation. To the contrary, the OFP suggests he continued to exhibit the threatening behavior that led to the underlying charges, behavior that the programming was intended to address. The record evidence of Pedersen's defiant attitude and failure to comply with the requirements of probation support the district court's determination that the need for confinement outweighed the policies favoring probation. Pedersen was in need of treatment he was unwilling to undertake while on probation and continued to pose a risk of committing future crimes. Accordingly, the district court did not abuse its discretion by revoking Pedersen's probation and executing his sentences.

Affirmed.