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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1124**

State of Minnesota,
Respondent,

vs.

Davante Atkins,
Appellant.

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

Olmsted County District Court
File Nos. 55-CR-15-8932; 55-CR-16-1561

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

Mark A. Ostrem, Olmsted County Attorney, James E. Haase, Assistant County Attorney,
Rochester, Minnesota (for respondent)

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

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

FLOREY, Judge

Appellant argues that the district court abused its discretion by revoking his probation because the need for his confinement did not outweigh the policies favoring continued probation. We affirm.

FACTS

In April 2019, appellant Davante Atkins came before the district court for a probation-violation hearing. While Atkins was on probation for a number of offenses, only two are relevant to the present appeal.

In December 2015, Atkins was stopped for suspicion of driving while impaired (DWI). Watkins was initially charged with fourth-degree assault, obstructing legal process, and fourth-degree DWI. The state dismissed the DWI charge before trial, and a jury found Atkins guilty of fourth-degree assault and obstructing legal process. The district court sentenced him to a stay of imposition with three years of probation.

In March 2016, Atkins was charged in a separate matter with one count of financial-transaction card fraud for his unauthorized use of a stolen credit card at a number of stores in Rochester. Atkins submitted a petition to plead guilty, and the district court sentenced him to five years of probation.

On March 20, 2019, Atkins's probation officer filed a probation-violation report asserting that Atkins violated his probation by failing to contact his probation officer as directed and by failing to complete chemical-dependency treatment. The probation officer reported that Atkins refused to sign a behavior contract and left the Minnesota Adult and

Teen Challenge treatment program against staff advice on January 28, 2019. The probation officer was then unable to contact him, in part because she did not know where he was residing and did not have a consistent phone number for him. Even though it was his first formal probation violation, the probation officer recommended the execution of a 17-month sentence because Atkins requested to execute his sentence during a meeting with his probation officer.

During his probation-violation hearings, Atkins admitted that he failed to complete chemical-dependency treatment and failed to stay in contact with his probation officer, but argued that his probation should not be revoked because the need for his confinement did not outweigh the policies favoring probation. The district court revoked Atkins's probation and executed concurrent sentences of 19 months in prison for financial-transaction card fraud and 17 months for fourth-degree assault, amongst the execution of other sentences not implicated by the present appeal. This appeal followed.

D E C I S I O N

Atkins argues that the district court should not have revoked his probation and executed his sentences because the need for his confinement did not outweigh the policies favoring probation. When an offender violates a condition of probation, the district court may continue probation, revoke probation and execute the stayed sentence, or order intermediate sanctions. Minn. Stat. § 609.14, subd. 3 (2018). “The [district] court has broad discretion in determining if there is sufficient evidence to revoke probation and should be reversed only if there is a clear abuse of that discretion.” *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980).

In *Austin*, the supreme court stated that in order to revoke an offender's probation the district court must: "1) designate the specific . . . conditions that were violated; 2) find that the violation was intentional or inexcusable; and 3) find that need for confinement outweighs the policies favoring probation." *Id.* at 250. Atkins asserts that the district court abused its discretion regarding the third *Austin* factor.

When a revocation of probation is followed by a term of imprisonment, district courts should consider whether "the offender is in need of correctional treatment which can most effectively be provided if he is confined; or . . . it would unduly depreciate the seriousness of the violation if probation were not revoked." *Id.* at 251. Atkins asserts that these factors do not support the execution of his sentences because chemical-dependency treatment was still available to him in the community, and he has demonstrated that he can be accountable to probation.

In light of Atkins's repeated failures to comply with the terms of his probation, the record supports the district court's conclusion that correctional treatment could most effectively be provided if Atkins were confined. Atkins admitted that he failed to complete chemical-dependency treatment at Teen Challenge because he did not sign a behavioral contract. In addition, Atkins's probation officer testified that Atkins did not complete a treatment program at Zumbro Valley Mental Health Center due to an issue with his insurance. The probation officer also testified that Atkins failed to complete a rule 25 assessment after leaving the Teen Challenge program. The probation officer summarized her recommendation that Atkins was not amenable to treatment in the community because he "has been given several opportunities to go to treatment, to work on cognitive skills in

the office . . . Based on conversations with [his previous probation officer] prior to this he's been, again, handed lots of opportunities to show up and make[] changes and he has not."

Even though services would be available to Atkins if he were placed back on probation, the officer testified that she did not consider him amenable to treatment in the community due to his lack of communication with probation. Finally, the probation officer testified that Atkins had a subsequent assault conviction while on probation which she could have violated him for, but she chose to continue trying to work with him instead. The district court determined that due to Atkins's failure to maintain communication with his probation officer or complete treatment when offered, it "has no confidence that Mr. Atkins would follow through with programming in the community" because "Mr. Atkins has in all respects refused to be accountable."

In *Austin*, the supreme court stated that "[t]he appellant has been offered treatment but has failed to take advantage of the opportunity or to show a commitment to rehabilitation so it was not unreasonable to conclude that treatment had failed." 295 N.W.2d at 251. The same is true here. Even though the probation officer testified that services remained available to Atkins in the community, neither the probation officer nor the district court believed that Atkins would succeed now in light of his prior failures and continuing violations. On this basis, the district court did not abuse its discretion by determining that the third *Austin* factor—the need for confinement outweighs the policies favoring probation—favored revocation.

Affirmed.