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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1417**

State of Minnesota,
Respondent,

vs.

Luke Alexander Dean,
Appellant.

**Filed May 18, 2020
Affirmed
Smith, Tracy M., Judge**

St. Louis County District Court
File No. 69DU-CR-12-3627

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

Mark S. Rubin, St. Louis County Attorney, Duluth, Minnesota (for respondent)

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

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

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

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Luke Alexander Dean challenges the district court's order revoking his probation and executing his stayed sentence.¹ Dean argues that the district court abused its discretion by (1) deciding that the need for confinement outweighed the policies favoring continued probation and (2) imposing a ten-year conditional-release term after the district court imposed a five-year conditional-release term when it first pronounced the sentence and did not change the term on the record at his probation revocation hearing. We affirm.

FACTS

In 2013, Dean pleaded guilty to first-degree criminal sexual conduct based on sexual contact he had with his minor half-sister between 2005 and 2008. The district court sentenced Dean to 144 months' imprisonment with five years' conditional release, stayed execution of the sentence, and placed him on probation for ten years. As part of Dean's probation, the district court imposed conditions, including that he spend a year in custody, participate in sex-offender programming and treatment, avoid contact with the victim or other minors, not possess or use pornographic materials, and not access the internet without probation's approval. Dean violated his conditions of probation three times. The first two times, the district court did not revoke probation; the third time, the district court revoked probation, executed Dean's sentence, and imposed a ten-year conditional-release term, leading to this appeal.

¹ The state did not file a brief in this appeal.

Dean's first two probation violations occurred in 2016, three years after the initial sentencing. Both violations involved Dean's contacts with his minor children. As for the first violation, Dean admitted that he contacted his minor children, failed to complete his sex-offender treatment program, and possessed pornographic magazines. The district court continued Dean's probation but required him to spend nine months in custody and to restart and complete sex-offender treatment. As for the second violation, Dean admitted that he again tried to contact his minor children by sending them birthday cards. For a second time, the district court continued Dean's probation, this time with the condition that he spend another year in custody and continue sex-offender treatment.

In 2019, the third and final violation arose out of a relationship Dean began with a new girlfriend. Dean admitted that he had contact with his girlfriend's minor child, both at a store and at the girlfriend's parents' home. He explained that he was never alone with the child but also that he understood the probation condition was to have no contact with minor children. At a later disposition hearing, the district court heard from Dean's probation officer, who reviewed Dean's history, including describing some uncharged sexual conduct involving Dean's children and the termination of Dean's parental rights. Appellant's counsel urged the district court to continue probation, along with some additional confinement, arguing that long-term public safety would be best served by appellant's rehabilitation through treatment in the community.

The district court orally indicated that it was revoking Dean's probation and executing his sentence. The district court thereafter issued an amended sentencing order, which executed Dean's 144-month sentence, updated Dean's time-served credit, and

imposed a ten-year, rather than five-year, term of conditional release after confinement. The district court also made written findings regarding its probation revocation.

This appeal follows.

DECISION

I. The district court did not abuse its discretion by revoking Dean’s probation.

If an offender with a stay of execution admits a probation violation, a district court may continue the offender on probation or revoke the stay of execution and execute the sentence. Minn. R. Crim. P. 27.04, subd. 3(2)(b). To revoke an offender’s probation, a district court “must 1) designate the specific condition or 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.” *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). “A 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. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005) (quotation omitted).

Dean challenges only the third *Austin*-factor finding, arguing that the need to confine him does not outweigh the policies favoring probation. In assessing whether the need for confinement outweighs the policies favoring probation, a district court should consider whether (1) “confinement is necessary to protect the public from further criminal activity,” (2) the offender needs “correctional treatment which can most effectively be provided if he is confined,” or (3) reinstating probation “would unduly depreciate the seriousness of the violation.” *Id.* at 607 (quotation omitted). In some cases, “policy

considerations may require that probation not be revoked even though the facts may allow it.” *Id.* at 606 (quotation omitted).

The district court determined that confinement was necessary to protect the public from further criminal activity. Specifically, it found that Dean was “at an extremely high risk of reoffending” and that his continued presence in the community posed an “immediate and pressing danger” to the public. The district court cited the behavior that led to Dean’s conviction, the earlier probation violations, his lack of rehabilitation, and his unacceptable sexual behaviors. Specifically, the district court emphasized Dean’s conduct leading to the third violation, in which Dean was evasive about having contact with his girlfriend’s child and continued the relationship with his girlfriend, despite his treatment group’s recommendation that he end it.

Dean argues that “[t]his case is the rare case where policy considerations required that the district court not revoke Dean’s probation, even though the facts may have allowed it.” He contends the facts show that he was on a path of rehabilitation. He claims that he has come to recognize the impact that his own childhood victimization has had on his behavior. And Dean states that, while treatment has been difficult, he has made progress over the last year and had begun working to support himself.

We conclude that the record supports the district court’s determination and does not suggest that this is a rare case requiring continued probation. Dean admitted that he had contact with the minor child and knew that his probation conditions did not allow that contact. Furthermore, Dean’s treatment program terminated his treatment when the state filed the third probation-violation report. In terminating Dean’s treatment, the treatment-

program therapist wrote two letters describing issues Dean had during treatment, contradicting Dean's claim that he was making progress. Indeed, the therapist stated that Dean was using his increased knowledge from the program to better manipulate others, rather than to "moderate his risk for sexually acting out." She also stated that Dean was "at high risk of reoffending and would likely reoffend if given the opportunity."

Dean's argument that he has made progress in rehabilitation does not address the district court's determination that Dean was likely to reoffend and appeared to be grooming another potential victim when he violated his probation conditions. His argument that he was a victim of abuse as a child, while sympathetic, also does not address the district court's determination. The district court did not abuse its discretion by concluding that the need for confinement outweighed the policy concerns supporting probation.

II. The district court did not abuse its discretion by correcting Dean's sentence.

Dean argues that the district court erred by changing his sentence from five to ten years of conditional release after confinement. The district court "may at any time correct a sentence not authorized by law." Minn. R. Crim. P. 27.03, subd. 9. Appellate courts afford the district court "great discretion in the imposition of sentences and reverse sentencing decisions only for an abuse of that discretion." *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted). A district court abuses its discretion if it errs in its application of the law. *See State v. Williams*, 862 N.W.2d 701, 703 (Minn. 2015) (discussing review of postconviction court's denial of motion to correct sentence).

When Dean was originally sentenced, the warrant of commitment indicated a stayed sentence of 144 months' imprisonment and a five-year period of conditional release. At the

disposition hearing on the probation violation, the district court revoked Dean's stay of execution, stating:

Here's where I'm at, Luke. I think it's time to—to shut this down. I've looked at it. I've thought about it. I read the letter from The Institute two or three times, and that doesn't mean the work is done or that anybody's throwing you away, but it does mean you do the prison time.

You've got 693 days of credit against the sentence. *You've got that conditional release period.* It's gonna be continued work. It's gonna be in a different environment.

(Emphasis added.) The district court made no comments about the length of the conditional-release period, nor did it suggest it was planning to modify Dean's original sentence.² But when the district court amended Dean's sentencing order to execute his sentence, it changed the number of years of conditional release after confinement from five to ten.

Dean characterizes these actions as the district court imposing a sentence orally and then issuing a written order that conflicts with the oral sentence. He contends that the district court's statement about "that conditional release period" amounts to an oral pronouncement that it was imposing the previous five-year conditional-release sentence. As Dean notes, we have previously concluded that the district court's "formal on-the-record pronouncement of sentence is controlling" over a warrant of commitment, at least

² At the hearing, the probation officer did mention that, "at this point . . . that would obviously require ten years of conditional release." But neither the officer nor the district court elaborated further.

when determining whether the district court imposed concurrent or consecutive sentences. *State v. Rasinski*, 527 N.W.2d 593, 595 (Minn. App. 1995).

But even if the district court's imposition of ten years of conditional release departed from its oral pronouncement at the disposition hearing or from the original sentencing order, the district court did not abuse its discretion. In imposing ten years of conditional release, the district court was correcting Dean's sentence in accordance with law. Under Minnesota law, a district court must place offenders convicted of first-degree criminal sexual conduct on conditional release for a mandatory period of ten years following the offender's release from prison. Minn. Stat. § 609.3455, subd. 6 (2008). These mandatory terms may not be waived in a plea agreement. *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000). Appellate courts may not enforce through specific performance an agreement that does not have these mandatory terms. *State v. Garcia*, 582 N.W.2d 879, 881-82 (Minn. 1998).

The district court convicted Dean based on his admission to committing multiple acts of sexual abuse between January 1, 2005, and December 31, 2008, so his admission establishes that his criminal sexual conduct occurred after the August 1, 2005 effective date of the mandatory ten-year period. *See* 2005 Minn. Laws ch. 136, art. 2, § 21, subd. 6, at 931 (adding the mandatory ten-year period of conditional release after confinement); *see also Rickert v. State*, 795 N.W.2d 236, 242-43 (Minn. 2011) (holding that a guilty plea to criminal sexual conduct “[o]n or about 2003 through 2006” established that the criminal conduct occurred in 2006, so the ten-year conditional release applied). Dean was therefore subject to the mandatory ten-year requirement, and the district court had the authority to

correct the sentence at any time. *See* Minn. R. Crim. P. 27.03, subd. 9. Dean is not entitled to the specific performance of the district court's oral sentence because such a sentence, with only five years of conditional release after confinement, would be unlawful. *See Garcia*, 582 N.W.2d at 881-82.

Thus, the district court did not abuse its discretion by correcting Dean's sentence to include ten years of conditional release after confinement.

Affirmed.