

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1053**

State of Minnesota,
Respondent,

vs.

Stephen Jon Barthold,
Appellant.

**Filed May 17, 2021
Reversed and remanded
Kalitowski, Judge***

Washington County District Court
File No. 82-CR-13-4380

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

Pete Orput, Washington County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Mark D. Kelly, Law Offices of Mark D. Kelly, St. Paul, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Segal, Chief Judge; and
Kalitowski, Judge.

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

NONPRECEDENTIAL OPINION

KALITOWSKI, Judge

Appellant challenges the revocation of his probation, making several arguments including that the district court abused its discretion by denying his counsel's request for a continuance of the revocation hearing. We reverse and remand for a new probation-revocation hearing.

FACTS

In November 2015, appellant Stephen Jon Barthold pleaded guilty to aiding and abetting a controlled-substance crime in the first degree. The district court imposed a 276-month sentence, which was an upward durational departure, but in a dispositional departure, stayed execution of the sentence and placed Barthold on probation.

On May 27, 2020, Barthold was arrested after he allegedly violated conditions of his probation requiring him to submit to random drug testing and complete a cognitive skills program. On May 28, the district court approved Barthold's request for court-appointed counsel. Barthold appeared in court that day, represented by a public defender, and denied the alleged probation violations. The district court granted the state's request to hold Barthold without bail.

Eleven days later, on June 8, 2020, the parties appeared for a contested probation-revocation hearing. Barthold was represented by a different public defender. At the beginning of the hearing, Barthold's counsel moved for a continuance, arguing that he needed more time to prepare for the hearing. He explained that it had been "difficult to communicate with Mr. Barthold while he is in custody." Because of COVID-19-related

restrictions at the jail, Barthold had been on a 23-hour-per-day lockdown and had been unable to have a face-to-face visit with his attorney. Barthold's counsel stated that the restrictions were going to be relaxed later that week, which would permit him to have phone calls with Barthold that no longer had to take place during "a very limited time window." Barthold's counsel further stated that he wanted to "follow up with Mr. Barthold's request for additional investigation from my office." This line of investigation apparently related to Barthold's mother's hospitalization on at least one of the dates that Barthold missed a drug test. Barthold's counsel explained that the investigator for the public defender's office was on leave and had been unavailable to conduct an investigation. Finally, Barthold's counsel said that he needed a continuance in order to "get some statements from the individuals [Barthold has] been spending time with while on probation and in the last year or so about his sobriety as well as the support he's been able to provide for his mother with her medical issues." He argued that the information would be relevant to the district court's determination of whether to revoke Barthold's probation.

The state objected to Barthold's continuance request, arguing that it was prepared to proceed and that Barthold's probation officer already had information regarding one of Barthold's mother's hospital visits. Barthold's probation officer also stated that she was prepared to proceed. Without explanation, the district court denied Barthold's request for a continuance. Following testimony from Barthold's probation officer and Barthold, the district court revoked Barthold's probation and executed his sentence.

Barthold appealed the revocation of his probation. At Barthold's request, we stayed his appeal to allow him to seek postconviction relief. Barthold then filed a petition for

postconviction relief, in which he argued that the district court abused its discretion by denying his request for a continuance of the probation-revocation hearing and by concluding that the factors necessary for revoking his probation were satisfied. The district court dismissed Barthold's petition without a hearing and concluded that it had not abused its discretion with respect to either of Barthold's claims. On Barthold's motion, we dissolved the stay and reinstated this appeal.

DECISION

Barthold makes several arguments on appeal, including that the district court abused its discretion by denying his request for a continuance of the revocation hearing because the denial prejudiced his preparation of an adequate defense. "The decision to grant or deny a motion for a continuance lies within the sound discretion of the district court and will only be reversed upon a showing of abuse of discretion." *Johnson v. State*, 697 N.W.2d 194, 198 (Minn. 2005). "A defendant must show prejudice to justify a reversal." *Id.*

Based on the unique circumstances of this case, we conclude that there were compelling reasons for the district court to continue the probation-revocation hearing to afford Barthold's counsel adequate preparation time. The hearing took place only twelve days after Barthold's arrest and Barthold's counsel had only recently been assigned the case. Barthold was in custody for the entirety of that time and was subject to strict pandemic-related restrictions that prohibited him from having face-to-face meetings with his attorney and limited his ability to make phone calls to a one-hour period each day. At the revocation hearing, Barthold's counsel explained these circumstances to the district

court and identified potential areas of investigation that he wanted to pursue that would have been relevant to the court's determination whether to revoke Barthold's probation. Counsel further explained that the investigator for the public defender's office had been unavailable during the relevant time period to conduct such an investigation. We also note the particularly serious nature of the probation-revocation hearing—Barthold faces an executed sentence of over 20 years. Based on the totality of these circumstances, the district court had good cause to continue the hearing and grant defense counsel the opportunity to prepare to counter the state's allegations that Barthold had violated the conditions of his probation.

Despite the compelling reasons to continue the hearing, the district court denied Barthold's continuance request without explanation. In doing so, the district court did not make any findings that granting a continuance would prejudice the state. Nor did the state make any argument that it would be prejudiced if the hearing were continued. The state's mere assertion that it was prepared to proceed with the hearing did not provide sufficient justification for rejecting defense counsel's arguments that a continuance was necessary. Given the lack of evidence that a continuance would have prejudiced the state, Barthold's counsel's direct statement that he was not prepared to go forward, and the severe limitations on Barthold's counsel's ability to prepare for the hearing, the district court's decision to deny the continuance request constituted an abuse of its discretion.

The state contends that Barthold has not demonstrated that the district court abused its discretion because Barthold's counsel "did not explain in any detail why he needed a continuance at the probation revocation hearing." And the state further argues that

Barthold has failed to demonstrate prejudice because he “has provided no basis to conclude that, if the district court had granted the continuance, it would not have executed [Barthold’s] sentence.” We are not persuaded.

Here, Barthold’s counsel’s ability to conduct an adequate investigation prior to the hearing was precluded by the inability to adequately communicate with Barthold because of time constraints, COVID-19-related restrictions at the jail, and the unavailability of the investigator for the public defender’s office. Under those circumstances, we cannot fault Barthold for his counsel’s inability to explain in detail at the revocation hearing what evidence a future, contemplated investigation would have uncovered. And we furthermore cannot fault Barthold for being unable to show on appeal that the outcome of the revocation hearing would have been different had the district court granted his continuance request. The necessary evidence of prejudice is not in the record because the district court declined to continue the hearing.

On this record, we conclude that the district court abused its discretion by denying Barthold’s request for a continuance of the probation-revocation hearing. Because of this conclusion, we need not address appellant’s arguments that the court abused its discretion by determining the factors required to revoke probation were met, that his due-process rights under Minn. R. Crim. P. 27.04 were violated, and that the district court erred in denying an evidentiary hearing on his petition for postconviction relief. We reverse and remand to the district court for a new revocation hearing.

Reversed and remanded.