

*This opinion is nonprecedential except as provided by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
A21-1147**

State of Minnesota,
Respondent,

vs.

Erik Harrison Gawtry,
Appellant.

**Filed June 27, 2022
Affirmed
Reilly, Judge**

Dakota County District Court
File No. 19-K7-02-004046

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

Kathryn M. Keena, Dakota County Attorney, Jessica A. Bierwerth, Assistant County Attorney, Hastings, Minnesota (for respondent)

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

Considered and decided by Worke, Presiding Judge; Reilly, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

In this appeal from the district court's order revoking his probation, appellant argues that (1) the district court lacked subject-matter jurisdiction because his probation expired before the alleged probation violations, (2) the district court erred in finding him in

violation of a condition that had not been imposed by the court, and (3) the district court erred in determining that the need for his confinement outweighed the policies favoring continued probation. We affirm.

FACTS

In 2002, respondent State of Minnesota charged appellant Erik Harrison Gawtry with second-degree criminal sexual conduct following a report that he had sexual contact with a child under 13 years old. Gawtry pleaded guilty to the offense in 2003, and the district court stayed his sentence and placed Gawtry on probation for 15 years. The district court ordered Gawtry to follow the rules and regulations of probation and complete a sex offender treatment program, among other conditions. Gawtry began an outpatient sex offender treatment program with Project Pathfinder Inc. in September 2003.

In 2005, Gawtry violated a condition of probation by accessing pornographic material. The district court reinstated Gawtry's probation under the same conditions. Gawtry continued attending sex offender treatment at Project Pathfinder and was considered successfully discharged from the treatment program in 2007. In 2017, Community Corrections seized various electronics from Gawtry's home which contained pornographic materials including sexually explicit stories Gawtry authored and published online under a pseudonym. Many of the stories' themes included minors. And the stories' publication dates varied from the year 1999 to 2016. Community Corrections filed a probation-violation report, alleging that Gawtry again violated the conditions of probation by accessing pornographic material. Community Corrections referred Gawtry for a

psychosexual evaluation with Project Pathfinder. The evaluation recommended that Gawtry complete another structured sex offender program.

Gawtry admitted the violation and the district court reinstated his probation under the same conditions but added the condition that he complete another approved sex offender treatment program. The district court extended Gawtry's probation until 2019 to give him time to complete the treatment program.

In August 2017, Gawtry began attending a sex offender treatment program with Project Pathfinder. By March 2019, Gawtry had not yet completed the treatment program and his probation was set to expire in a month. Gawtry petitioned the district court to extend his probation for another year so that he could complete the program and avoid a probation violation. The district court granted the extension finding that Gawtry voluntarily waived his right to a hearing, that the extension was in the best interests of Gawtry and the public, and that the extension was authorized by law. The district court extended Gawtry's probation "until all court obligations are completed."

In April 2020, Community Corrections filed a report alleging that Gawtry violated a condition of probation by failing to complete a sex offender treatment program. At the probation violation hearing, Gawtry admitted to the violation and asked the district court to extend the stay of imposition for one year. The district court agreed and reinstated Gawtry's probation under the same conditions. The district court also imposed a stayed jail sentence of 180 days pending the completion of a sex offender treatment program. The district court scheduled a review hearing for May 2021.

In April 2021, one month before the review hearing, Project Pathfinder terminated Gawtry from the sex offender treatment program for a general lack of progress and for failing a polygraph exam. The discharge report stated that Gawtry demonstrated “rigidity in his approach to completing the remaining assignments” and “failed a maintenance polygraph on 3/26/21.” The discharge report also cited a letter that Gawtry had sent to people online stating:

[name of reader],
Thank you for reading. Unfortunately, according to Dakota County, Minnesota, my stories are considered pornography and they sent me to jail for writing them. I moved away from there and will continue them when I am off probation. Where I live now doesn't care, but they still have to execute the ruling from Dakota County.
Thanks again,
[Gawtry's pseudonym]

The discharge report stated that his therapist and staff members at the program tried to discuss the wrongfulness of the themes of his writing and to reiterate lessons learned from his therapy. But, based on Gawtry's lack of progress and his recent actions, Project Pathfinder decided to discharge him unsuccessfully from the program.

Shortly after his termination from the treatment program, Community Corrections filed another report alleging that Gawtry violated probation by failing to complete a sex offender treatment program. The district court held a contested revocation hearing in June 2021. The district court heard testimony from Gawtry's probation officer and from Community Corrections. The state requested that the district court revoke Gawtry's probation and execute his sentence. Gawtry's attorney requested that Gawtry be allowed to remain on probation and complete treatment.

The district court found that Gawtry violated his conditions of probation by failing to complete a sex offender treatment program and for owning “children’s Disney DVDs.”¹ The district court determined that it was “not convinced that [Gawtry is] not in a position to re-offend.” The district court also found that “the need for confinement here outweighs the policy favoring probation and that is because confinement is necessary to protect the public from further criminal activity.” The district court sentenced Gawtry to the commissioner of corrections for 21 months. This appeal follows.

DECISION

I. The district court had subject-matter jurisdiction to revoke Gawtry’s probation.

Gawtry argues that the district court lacked subject-matter jurisdiction to revoke his probation in 2021 because his probation expired in 2019. A district court lacks subject-matter jurisdiction when it “does not have the authority to hear and determine a particular class of actions and the particular questions that the court assumes to decide.” *Vang v. State*, 788 N.W.2d 111, 117 (Minn. 2010). “Subject-matter jurisdiction is a question of law that we review de novo.” *Daniel v. City of Minneapolis*, 923 N.W.2d 637, 644 (Minn. 2019).

Minnesota Statutes section 609.135, subdivision 1c (2020), outlines when a district court may execute a stay of imposition or a sentence:

If the court orders a defendant to undergo treatment as a condition of probation and if the defendant fails to successfully complete treatment at least 60 days before the term of

¹ Gawtry’s probation officer ordered Gawtry not to possess children’s DVDs because of his past grooming behaviors toward minors.

probation expires, the prosecutor or the defendant's probation officer may ask the court to hold a hearing to determine whether the conditions of probation should be changed or probation should be revoked.

Minn. Stat. § 609.135, subd. 1c. Similarly, subdivision 2(h) states:

[A] court may extend a defendant's term of probation for up to three years if it finds, at a hearing conducted under subdivision 1c, that: (1) the defendant has failed to complete court-ordered treatment successfully; and (2) the defendant is likely not to complete court-ordered treatment before the term of probation expires.

Minn. Stat. § 609.135, subd. 2(h) (2020).

Gawtry argues that the district court failed to follow the requirements of Minn. Stat. § 609.135, subds. 1c and 2(h), when it extended his probation based on the written waiver that he submitted in 2018. He contends that the waiver was not valid because an individual cannot waive their right to the hearing required by this statute. And he argues that any extension of his probation past 2019 was therefore void for lack of subject-matter jurisdiction because the district court did not hold a required probation hearing.

The state asserts that the district court had the authority to extend Gawtry's probation without holding a hearing because Gawtry signed a valid petition and stipulation waiving his appearance. We agree. Gawtry petitioned the district court to extend his probation for one year to allow him to complete a sex offender treatment program. The petition stated that he understood he had the right to a hearing to determine whether his probation should be extended but that he was waiving that right "freely and voluntarily without promises or threats." Gawtry signed the petition in March 2019. The district court granted the petition, finding that Gawtry waived his right to a hearing and that the waiver

was “free and voluntary.” The district court also found that the extension of probation was authorized under Minn. Stat. § 609.135.

Gawtry relies on *State v. Maurstad* to argue that a probation hearing cannot be waived. 733 N.W.2d 141 (Minn. 2007). In *Maurstad*, the Minnesota Supreme Court analyzed whether a criminal defendant may waive review of a criminal history score. *Id.* at 146. The court determined that a criminal defendant “may not waive review of his criminal history score calculation” because an “incorrect criminal history score is an illegal sentence” and an illegal sentence is unauthorized by law. *Id.* at 147. Thus, while a criminal defendant may forfeit certain arguments and issues on appeal, a criminal defendant does not waive the right to review the legality of a sentence.

This argument is not persuasive in the context of a hearing to extend a defendant’s probation. Allowing an individual to waive a probation-extension hearing does not invoke the same due process and public policy concerns as allowing an individual to waive review of a criminal history score. In this matter, Gawtry did not waive the right to have the district court review his probation sentence. Instead, he waived the right to a hearing before the district court over the extension of his probation term, and the district court still had to review his request for a probation extension and determine whether his sentence could be extended under Minnesota law. Here the district court found that extending Gawtry’s probation “is justified and is in the best interests of the defendant, the victim, and the community” and that the extension of probation was authorized under Minn. Stat. § 609.135.

Further, “courts will honor a defendant’s lawful, intentional relinquishment or abandonment of a known right or privilege.” *Spann v. State*, 704 N.W.2d 486, 491 (Minn. 2005) (quotation omitted). Such waivers are valid if they are made “intelligently, voluntarily[,] and with an understanding of the consequences.” *Id.* (quotation omitted). Allowing parties to stipulate or waive certain rights promotes judicial efficiency, saving both time and resources. As a matter of policy, stipulations are looked upon with favor by courts because they “obviate the necessity of presenting evidence.” *Anderson v. Anderson*, 225 N.W.2d 837, 840 (Minn. 1975) (discussing a stipulation in the context of a divorce proceeding).

Gawtry further argues that the waiver is not valid because the district court did not specify a date by which he had to complete treatment. Gawtry cites no cases to support his contention that the district court needed to set a firm date by which he had to successfully complete treatment. And we cannot find a case that supports his proposition. Thus, we determine that the district court validly extended Gawtry’s probation “until all court obligations are completed.”

In sum, Gawtry validly waived his right to a probation hearing. Gawtry signed the waiver, acknowledging that the waiver was “knowing, intelligent, and voluntary.” The district court accepted the waiver and extended his probation. In doing so, the district court acknowledged that Gawtry voluntarily waived his right to a probation hearing, that the law allowed the district court to extend Gawtry’s probation, and that it would be in the best interests of Gawtry and the public to do so. Thus, the district court had subject-matter jurisdiction to later revoke Gawtry’s probation in 2021.

II. The district court did not abuse its discretion when it revoked Gawtry's probation.

“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). “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. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017). Whether the district court made the findings required for revocation of probation is a question of law, which this court reviews de novo. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

District courts must consider the three *Austin* factors before revoking probation and must make specific findings about each factor. *Austin*, 295 N.W.2d at 250. The 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 the need for confinement outweighs the policies favoring probation.” *Id.* Gawtry argues that the district court erred in its findings on the first and third *Austin* factors. We address each argument in turn.

A. The district court did not abuse its discretion when it found that Gawtry violated conditions of probation.

The first *Austin* factor requires the district court to “designate the specific condition or conditions” that the probationer violated. *Id.* “Inherent” in this court’s consideration of which specific probation condition was violated “is the question of whether the condition was actually imposed as a condition of probation.” *State v. Ornelas*, 675 N.W.2d 74, 79

(Minn. 2004). Here, the district court found that Gawtry violated conditions of probation by owning “children’s Disney DVDs” and for failing to complete a sex offender treatment program. Gawtry contends that the district court never imposed the condition not to own “children’s Disney DVDs,” and thus erred in finding he violated that condition.

We first note that the district court’s finding that Gawtry violated probation by failing to complete the second court-ordered sex offender treatment program is sufficient by itself to satisfy the first *Austin* factor as only one violation is needed to support the district court’s decision to revoke probation. *Austin*, 295 N.W.2d at 250. Even so, the district court did not abuse its discretion in also finding that Gawtry violated a condition of probation by owning children’s movies.

Gawtry argues that the condition to not own “children’s Disney DVDs” was only imposed by probation officers. But the district court imposed many conditions of probation on Gawtry, one of which required Gawtry to “follow rules and regulations of Probation Department.” Gawtry’s probation officer in Goodhue County specifically instructed him not to possess children’s DVDs. This condition was put in writing in several probation reports. Thus, the district court did not abuse its discretion in finding that Gawtry violated conditions of probation.

B. The district court did not err in finding the need for confinement outweighs the policies favoring probation.

After the district court finds that a probationer violated a specific probationary condition, the district court must then “determine whether the need for confinement outweighs the policies favoring probation.” *Modtland*, 695 N.W.2d at 606. In assessing

whether the need for confinement outweighs the policies favoring probation, the district court should consider whether: (1) confinement is necessary to protect the public from further criminal activity, (2) the offender needs correctional treatment that can most effectively be provided in prison, or (3) reinstating probation would unduly depreciate the seriousness of the violation. *Id.* at 607.

Revocation must not be “a reflexive reaction to an accumulation of technical violations.” *Austin*, 295 N.W.2d at 251 (quotation omitted). Instead, “revocation should be used only as a last resort when treatment has failed.” *Id.* at 250. The Minnesota Supreme Court has stated the district court “must balance the probationer’s interest in freedom and the state’s interest in insuring his rehabilitation and the public safety.” *Modtland*, 695 N.W.2d at 606–07 (quotation omitted). A district court should explain its “substantive reasons for revocation and the evidence relied upon” in reaching that determination. *Id.* at 608.

Gawtry argues that his confinement was unnecessary to protect the public because he has not been charged with a new offense since his original offense in 2003 and because any probation violations during that time did not present a risk to public safety. Gawtry contends that he attended sex offender treatment for 11 years. Thus, he argues, the district court should have extended his probation to allow him to complete treatment. In analyzing the third *Austin* factor, the district court found:

the need for confinement here outweighs the policy favoring probation and that is because confinement is necessary to protect the public from further criminal activity. This Court is not convinced that you are not in a position to re-offend. That is this Court does feel public safety is better served when you

are fully treated. But you have shown that that is not something that you are interested in doing right now.

And the district court found that “correctional treatment can be most effective if [Gawtry] is confined.”

In *Austin*, the appellant pleaded guilty to burglary and assault charges and was sentenced to concurrent terms of 0-20 years for burglary and 1-5 years for assault. 295 N.W.2d at 248. The district court stayed appellant’s sentence and placed him on probation for 6 years. *Id.* Appellant violated probation by leaving a treatment center without permission and the district court reinstated his probation for another 6 years. *Id.* When appellant again did not attend or complete treatment, the district court revoked his probation. *Id.* at 249. The Minnesota Supreme Court found that “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.” *Id.* at 251.

The matter here is similar. The district court placed Gawtry on conditional probation which required him to complete a sex offender treatment program. The district court extended Gawtry’s probation three times so that he could complete the treatment program. Gawtry attended a sex offender treatment program for 11 years and although Gawtry was considered successfully discharged from the Project Pathfinder program in 2007, the record shows he did not change his behavior after treatment. In 2017, a search of his electronic devices revealed that Gawtry accessed pornographic material and published pornographic stories online under a pseudonym. Many stories Gawtry published

featured children. Gawtry continuously published these stories between 1999 and 2016—long after he was considered successfully discharged from a sex offender treatment program. In 2017, the district court found Gawtry violated conditions of probation by accessing pornographic material and ordered him to complete another sex offender treatment program. Gawtry never completed this second program. The district court also found that he was not actually successful in his first program because he “faked his way through it” and that he was an untreated sex offender. And in 2019, Gawtry used his pseudonym to publish a letter online stating he would keep writing the sexually explicit stories when he was off probation.

The district court gave Gawtry multiple chances to complete a treatment program. But the district court ultimately decided that Gawtry failed to show a commitment to rehabilitation and that he did not succeed in his sex offender treatment program. As a result, the district court determined that Gawtry was in a position to reoffend and thus presented a risk to public safety. Because these findings are supported by the record, we hold that the district court did not abuse its discretion on the third *Austin* factor.

Affirmed.