STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1181

State of Minnesota,
Respondent,

vs.

Jorge Luis Vargas-Perez,
Appellant.

Filed April 18, 2022
Affirmed
Frisch, Judge

Rice County District Court
File No. 66-CR-18-1232

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

John Fossum, Rice County Attorney, Sean R. McCarthy, Assistant County Attorney, Faribault, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrew J. Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Bjorkman, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Following the revocation of his probation, appellant argues that the district court abused its discretion by concluding that the need for his confinement outweighed the policies favoring continued probation. We affirm.

FACTS

The Charge, Guilty Plea, and Plea Conditions

In May 2018, respondent State of Minnesota charged appellant Jorge Luis Vargas-Perez with first-degree possession of a controlled substance, in violation of Minn. Stat. § 152.021, subd. 2(a)(1) (2016).

In February 2020, the parties reached a plea agreement. The parties agreed that, in exchange for a plea of guilty to first-degree possession of a controlled substance, Vargas-Perez would receive a stay of execution of sentence, representing a downward dispositional departure from the Minnesota Sentencing Guidelines. The agreement was contingent on Vargas-Perez meeting certain conditions, including completing a specific outpatient chemical-dependency program and promptly obtaining mental-health services. The district court accepted the guilty plea and continued the matter for sentencing.

In April 2020, Vargas-Perez was discharged from the outpatient chemical-dependency program "for violating [the program's] absence policy many times over." He also did not obtain mental-health services. But in September 2020, Vargas-Perez successfully completed a different program which included both chemical-dependency and mental-health treatment.

The Sentencing Hearing

In December 2020, the district court held a sentencing hearing. The state argued that Vargas-Perez violated the plea agreement and requested that the district court impose the presumptive guidelines sentence of 65 months' imprisonment. Vargas-Perez requested that the district court stay imposition or execution of sentence and place him on probation.

Vargas-Perez asked the district court for "one final opportunity," and his counsel expressly argued that "there's always prison as punishment if Mr. Vargas-Perez is not successful on probation." The district court found Vargas-Perez to be "particularly amenable to treatment in the community," stayed execution of sentence, and placed Vargas-Perez on probation for five years. Notwithstanding the stayed sentence, the district court stated that it had "grave concerns" about Vargas-Perez's "ability to be successful on probation" and that the probationary sentence is "a short leash."

The probationary conditions imposed by the district court included, in relevant part, that Vargas-Perez contact his probation officer as directed, remain law-abiding and notify probation if he has "any contact with law enforcement," and obtain mental-health services within 30 days. The district court pronounced these conditions orally at the sentencing hearing and set forth the conditions in a written sentencing order issued after the hearing. Vargas-Perez's probation officer also reiterated these conditions in a telephone conversation "immediately after sentencing." And the warrant of commitment, in pertinent part, specifically listed the probationary condition that Vargas-Perez "must obtain Mental Health Services within the next 30 days."

The Probation-Violation Report and Contested Revocation Hearings

In April 2021, Vargas-Perez's probation officer filed a probation-violation report, alleging that Vargas-Perez violated multiple conditions of his probation. In May 2021, a district court judge who did not sentence Vargas-Perez held a contested probation-violation hearing to determine the specific probationary conditions violated and whether any such violation was intentional and inexcusable, the first two *Austin* factors. *State v. Austin*, 295

N.W.2d 246, 250 (Minn. 1980) (applying a three-step probation-violation analysis: (1) designate the specific conditions violated, (2) determine whether the violation was "intentional or inexcusable," and (3) evaluate whether the "need for confinement outweighs the policies favoring probation"). Following this contested hearing, the district court found that Vargas-Perez violated three probationary conditions: he failed to contact his probation officer as directed, failed to remain law-abiding and notify probation of his contact with law enforcement, and failed to obtain mental-health services. The district court found that each violation of probation was intentional and inexcusable.

In June 2021, the district court judge who sentenced Vargas-Perez held a contested hearing to determine whether the need for confinement outweighed the policies favoring probation, the third *Austin* factor. *See id.* The district court found that the need for confinement did outweigh the policies favoring probation because mental-health treatment could most effectively be provided if Vargas-Perez was in custody, and that not revoking probation would depreciate the seriousness of the violations. The district court concluded that Vargas-Perez's failure to obtain mental-health services "goes right to the reason that this Court departed from the presumptive commit to prison" and the "Court gave Mr. Vargas-Perez an opportunity to get services in the community. He didn't take that opportunity." It further found that "[t]hese are not minor violations of probation. They are significant." The district court revoked Vargas-Perez's probation and executed the 65-month sentence.

Vargas-Perez appeals.

DECISION

Vargas-Perez argues that the district court abused its discretion by revoking his probation because "the record did not establish that the policies favoring probation were outweighed by a need for confinement."[1] We disagree.

"The [district] court has broad discretion in determining if there is sufficient evidence to revoke probation," and we reverse "only if there is a clear abuse of that discretion." *Id.* at 249-50. "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. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

Before a district court can revoke probation, it 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." *Austin*, 295 N.W.2d at 250. In this appeal, Vargas-Perez contests only the district court's findings on the third *Austin* factor.

In determining whether the need for confinement outweighs the policies favoring probation, a district court must balance the probationer's interest in freedom against the state's interests in ensuring public safety and the probationer's rehabilitation. *State v. Modtland*, 695 N.W.2d 602, 606-07 (Minn. 2005). In making that determination, district courts consider whether "(i) confinement is necessary to protect the public from further

[1] The state did not file a brief in this appeal, so we ordered that the appeal proceed pursuant to Minn. R. Civ. App. P. 142.03 (providing that if respondent fails to file a brief, the case shall be determined on the merits).

criminal activity by the offender; or (ii) the offender is in need of correctional treatment which can most effectively be provided if [the offender] is confined; or (iii) [not revoking probation] would unduly depreciate the seriousness of the violation." *Id.* at 607 (quotation omitted). District courts must base their decisions "on sound judgment and not just their will." *Id.* at 606-07 (quotation omitted). A district court's findings are adequate when it provides "substantive reasons for revocation." *Id.* at 608.

Here, the district court acted within its discretion by revoking Vargas-Perez's probation when it found that he was in need of correctional treatment that could be most effectively provided in confinement.[2] The district court explicitly conditioned Vargas-Perez's probation on him obtaining mental-health services within 30 days of sentencing. Between the December 2020 sentencing hearing and the June 2021 revocation of his probation, Vargas-Perez failed to obtain mental-health services. In revoking his probation, the district court stated that his failure to obtain such services "goes right to the reason that this Court departed from the presumptive commit to prison" because the district court previously departed based on Vargas-Perez's amenability to treatment. *See State v. Fleming*, 869 N.W.2d 319, 331 (Minn. App. 2015), *aff'd*, 883 N.W.2d 790 (Minn. 2016) (stating that a district court may consider an underlying downward dispositional departure when deciding whether to revoke probation). The district court added that it "gave Mr. Vargas-Perez an opportunity to get services in the community. He didn't take that

[2] We need not address whether the district court abused its discretion by also finding that continued probation would unduly depreciate the seriousness of the violations because the district court need only find the existence of one *Modtland* subfactor to revoke probation. *See Modtland*, 695 N.W.2d at 606-07 (separating each subfactor by the conjunction "or").

opportunity." Stated differently, the district court determined that Vargas-Perez was no longer particularly amenable to probation and that the violation was serious.

Vargas-Perez argues that the district court nevertheless abused its discretion by revoking probation instead of affording him additional opportunities for treatment in the community. It is true that the supreme court has stated, "In some cases, policy considerations may require that probation not be revoked even though the facts may allow it . . . . The purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed." *Austin*, 295 N.W.2d at 250. But the supreme court has also explained that "it [is] not unreasonable to conclude that treatment ha[s] failed" when a defendant "has been offered treatment but has failed to take advantage of the opportunity or to show a commitment to rehabilitation." *Id.* at 251. The district court's finding that treatment had failed because Vargas-Perez repeatedly did not take advantage of the opportunity to obtain mental-health services in the community is supported by the record.

Although another district court might have elected not to revoke Vargas-Perez's probation, our review of the revocation decision is for an abuse of discretion, and we cannot say that the district court's decision here was such an abuse of its discretion. *See State v Blom*, 682 N.W.2d 578, 613 (Minn. 2004) (stating that the district court did not abuse its discretion when another district court, in the proper exercise of its discretion, may have reached a different result on the same facts).

Affirmed.