

*This opinion is nonprecedential except as provided by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
A22-1248**

State of Minnesota,
Respondent,

vs.

Majed Issac Ijong,
Appellant.

**Filed May 22, 2023
Affirmed
Johnson, Judge**

Olmsted County District Court
File No. 55-CR-17-7367

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, Jennifer Lauermann, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Johnson, Judge; and Hooten,
Judge.*

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

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Majed Issac Ijong was placed on probation after he pleaded guilty to second-degree criminal sexual conduct. Ten times he violated conditions of his probation but was continued on probation. After the eleventh violation, the district court revoked Ijong's probation and imposed an executed sentence of 36 months of imprisonment. We conclude that the district court did not err by finding that Ijong made a valid waiver of his right to counsel at the final probation-violation hearing. We also conclude that the district court did not err by revoking Ijong's probation and imposing an executed prison sentence. Therefore, we affirm.

FACTS

In January 2018, the state charged Ijong in an amended complaint with three counts of first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(a) (2016), and two counts of second-degree criminal sexual conduct, in violation of Minn. Stat. § 609.343, subd. 1(a) (2016). The state alleged that, in September and October of 2017, Ijong sexually abused a four-year-old girl by inserting his penis in her mouth, touching her genital area with his hand, and touching her genital area with his mouth.

In March 2018, after a rule 20.01 competency evaluation, the district court found that Ijong was mentally ill and incapable of understanding the criminal proceedings and participating in his defense, and the case was stayed. Two months later, it was determined that Ijong "no longer required hospital level of care," and he was discharged from a

treatment facility and returned to jail. In September 2018, the district court found that Ijong was competent, and the case was reactivated.

In October 2018, the state and Ijong entered into a plea agreement. Ijong agreed to plead guilty to the second-degree charge in count 4, and the state agreed to dismiss the other charges. Ijong admitted that, in September 2017, he touched the girl's genital area with his mouth on two occasions and inserted his penis into her mouth on one occasion.

In December 2018, the district court stayed imposition of sentence and placed Ijong on probation, with numerous conditions, for 25 years.

During the next three and one-half years, Ijong violated conditions of his probation on multiple occasions. On some of those occasions, Ijong admitted in writing that he had violated conditions of his probation and agreed to participate in a "sanctions conference" with his assigned probation officer in lieu of a court hearing. On other occasions, the district court conducted a hearing and made a finding that Ijong had violated conditions of his probation.

First, in February 2019, Ijong admitted in writing that he contacted the victim or her family without approval. He agreed to three particular sanctions, including the sanction of staying three blocks away from the victim's home.

Second, in May 2019, Ijong admitted during a court hearing that he did not maintain probation-approved housing after he was discharged from a halfway house for "[i]nappropriate sexual behavior." The district court found that he violated a condition of his probation, reinstated him on probation, and ordered that he serve up to 50 days in jail.

Third, in March 2021, Ijong admitted during a court hearing that he used alcohol, accessed pornography, contacted the victim's mother through social media, and refused to submit to a search requested by his probation officer. The district court found that he violated conditions of his probation and continued his probation with the same conditions.

Fourth, in July 2021, Ijong admitted in writing that he contacted a minor, accessed social media without permission, used alcohol, and possessed pornography. He agreed to the sanction of being placed on GPS monitoring.

Fifth, in August 2021, Ijong admitted during a court hearing that he refused to submit to a search requested by his probation officer, refused to submit to a random drug test, and did not comply with the requirements of GPS monitoring. The district court found that he violated conditions of his probation, reinstated him on probation, and ordered that he serve 20 days in jail.

Sixth, in September 2021, Ijong admitted in writing that he used marijuana. He agreed to the sanction of completing an updated chemical-use assessment and abiding by the assessor's recommendations.

Seventh, again in September 2021, Ijong admitted during a court hearing that he did not take his medications as prescribed. Ijong's probation officer stated that Ijong had "a ton of technical violations," that "at some point his treatment provider is going to run out of options," and that Ijong should know that "this behavior needs to stop." The state requested that the district court revoke the stay of imposition and convert it to a stay of execution. The district court maintained the stay of imposition but informed Ijong that he

had “one more opportunity to keep the stay of imposition and keep the felony off your record.”

Eighth, in October 2021, Ijong admitted in writing that he accessed social media without permission, accessed pornography, and disabled his GPS monitor. He agreed to the sanction of complying with the requirements of GPS monitoring.

Ninth, in December 2021, Ijong admitted in writing that he accessed the internet without permission, contacted the victim’s family through social media, and accessed social media without permission. He agreed to the sanction of complying with the rules of his treatment facility and the directives of its staff.

Tenth, in April 2022, Ijong’s probation officer filed a probation-violation report alleging that Ijong violated a probation condition when his participation in a sex-offender-treatment program was terminated. Ijong admitted during a court hearing that he committed the alleged violation. The parties agreed that the district court should continue Ijong on probation with additional conditions that required him to serve 10 days in jail, to then re-enter a treatment program for two months, and to then serve 60 additional days in jail. The district court adopted the parties’ recommendation.

Finally, in May 2022, Ijong’s probation officer filed a probation-violation report alleging that Ijong possessed pornography and other sexually explicit materials, some of which depicted partially clothed children, and did not take his medications as prescribed. At an admit-deny hearing later that month, Ijong informed the district court that he wanted to represent himself. The district court conducted a contested revocation hearing in June 2022. At the outset of the hearing, Ijong reiterated that he wanted to represent himself.

The district court asked him a series of questions to confirm that he did not want an attorney and wanted to represent himself. The district court received testimony from Ijong's probation officer and from Ijong. After listening to the oral arguments of Ijong and the prosecutor, the district court revoked the stay, imposed a sentence of 36 months of imprisonment, and ordered execution of the sentence. Ijong appeals.

DECISION

I. Waiver of Right to Counsel

Ijong first argues that the district court erred by not obtaining a valid waiver of his constitutional right to counsel.

Both the United States and Minnesota constitutions give criminal defendants a right to the assistance of counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. In Minnesota, it is well established that the right to counsel applies at a probation-revocation hearing. Minn. Stat. § 609.14, subd. 2 (2022); Minn. R. Crim. P. 27.04, subd. 2(1)(c)a; *State v. Ferris*, 540 N.W.2d 891, 893 (Minn. App. 1995). Likewise, criminal defendants have a constitutional right to self-representation. *Faretta v. California*, 422 U.S. 806, 814 (1975); *State v. Christian*, 657 N.W.2d 186, 190 (Minn. 2003). Accordingly, “forcing a lawyer upon an unwilling defendant is contrary to his basic right to defend himself if he truly wants to do so.” *Faretta*, 422 U.S. at 817.

A defendant's constitutional right to counsel “may be relinquished in three ways: (1) waiver, (2) waiver by conduct, and (3) forfeiture.” *State v. Jones*, 772 N.W.2d 496, 504 (Minn. 2009). In this case, the parties' arguments focus on the first means by which a defendant may relinquish the constitutional right to counsel: waiver.

“Waiver is the voluntary relinquishment of a known right.” *Id.* To be valid, a waiver of the constitutional right to counsel must be “knowing, intelligent, and voluntary.” *Id.* Whether a waiver of the constitutional right to counsel is valid “depends ‘upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.’” *State v. Worthy*, 583 N.W.2d 270, 275-76 (Minn. 1998) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). To ensure that a waiver is valid, a defendant “‘should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with eyes open.’” *Id.* at 276 (quoting *Faretta*, 422 U.S. at 835). Specifically, a district court “‘should comprehensively examine the defendant regarding the defendant’s comprehension of the charges, the possible punishments, mitigating circumstances, and any other facts relevant to the defendant’s understanding of the consequences of the waiver.’” *Id.* (quoting *State v. Camacho*, 561 N.W.2d 160, 173 (Minn. 1997)).

If a district court finds that a defendant has made a valid waiver of the right to counsel, this court applies a clear-error standard of review to that finding. *Id.* If the relevant facts are undisputed, this court applies a *de novo* standard of review to the question whether a defendant’s waiver is constitutionally valid. *State v. Rhoads*, 813 N.W.2d 880, 885 (Minn. 2012). If a district court does not conduct a proper inquiry concerning a defendant’s waiver of the right to counsel, reversal is required only if “the particular facts and circumstances of the case” do not “demonstrate a valid waiver.” *Id.* at 889.

In this case, the district court made multiple inquiries of Ijong in response to his statement that he wanted to represent himself at the probation-revocation hearing. At the outset of the June 2022 hearing, the district court confirmed that Ijong had been offered but had declined a public defender. The district court confirmed that Ijong still wanted to represent himself. The district court asked Ijong whether he was “thinking clearly today” and whether he was “under the influence of any alcohol or mood-altering substances,” and Ijong gave clear, satisfactory responses to both questions. On two occasions, the district court explained to Ijong—and confirmed that he understood—that the hearing was a contested revocation hearing. Specifically, the district court explained that the state had the burden to prove that Ijong violated conditions of his probation and that the violations were intentional and inexcusable and, further, that if the state satisfied its burden on those issues, the district court would “decide whether you stay on probation or whether you need to be sent to prison.” The district court confirmed that Ijong understood that the state was recommending that Ijong “be sent to prison.” The district court also confirmed that Ijong understood that he had “a right to be represented by an attorney to . . . help you fight the probation violation as well as help you put forth a case for staying on probation” but that, “if you represent yourself, you’re going to have to do that on your own.” The district court further confirmed, with four additional questions, that Ijong was sure that he wanted to represent himself and would not change his mind. The district court then proceeded with the hearing.

Ijong contends that his waiver of his constitutional right to counsel is invalid for four reasons. First, he contends that his waiver is invalid because he did not sign a written

waiver pursuant to the rules of criminal procedure. Ijong cites a rule providing that, at a first appearance in a felony case, a district court “must ensure that defendants charged with a felony who appear without counsel, do not request counsel, and wish to represent themselves, enter on the record a voluntary and intelligent written waiver of the right to counsel.” Minn. R. Crim. P. 5.04, subd. 1(4). The next sentence of the rule provides, “If the defendant refuses to sign the written waiver form, the waiver must be made on the record.” *Id.* The provisions of rule 5.04 generally apply to a defendant’s first appearance after the initiation of probation-revocation proceedings. Minn. R. Crim. P. 27.04, subd. 2(2). We are unaware of any caselaw for the proposition that rule 5.04, subdivision 1(4), applies at a probation-revocation hearing. In any event, this court has held that, “even if a waiver is not in writing, it may still be constitutionally valid if the circumstances demonstrate that the defendant has knowingly, voluntarily, and intelligently waived his right to counsel.” *State v. Haggins*, 798 N.W.2d 86, 90 (Minn. App. 2011) (affirming waiver of counsel at fourth pre-trial hearing). Thus, Ijong’s waiver of his constitutional right to counsel is not invalid simply because it was not in writing. Nonetheless, we note that parties and district courts may choose to use written waivers of counsel in this circumstance, which would help ensure that a waiver of the constitutional right to counsel is valid.

Second, Ijong contends that his waiver is invalid on the ground that the district court conducted a “limited examination into [his] comprehension of the proceedings or any other facts relevant to [his] understanding of the consequences of the waiver.” As stated above, a district court “should comprehensively examine the defendant regarding [1] the

defendant's comprehension of the charges, [2] the possible punishments, [3] mitigating circumstances, and [4] any other facts relevant to the defendant's understanding of the consequences of the waiver." *Worthy*, 583 N.W.2d at 276 (quotation omitted; numerals added). Ijong has not identified any particular subject that was missing from the district court's inquiry. The district court's inquiry satisfies the requirements of *Worthy*. The district court clearly explained to Ijong that the hearing would be concerned with whether he had violated a condition of his probation and, if so, the consequences of such a violation. The district court confirmed that Ijong understood that he could be sent to prison. The district court confirmed that Ijong understood that, after waiving his right to counsel, he would be responsible for representing himself. The district court's inquiry was not "limited"; it was as "comprehensive" as is required by *Worthy*.

Third, Ijong contends that his waiver is invalid on the ground that his decision "was heavily influenced by his understanding that, if he chose to use counsel, he would remain in custody." At the admit-deny hearing, Ijong stated that he would lose his job if he did not return to work within three days. The district court was unable to schedule the revocation hearing for a date any sooner than seven days later. At the revocation hearing, Ijong did not make any further reference to his employment. Ijong did, however, ask the district court whether, if he requested an attorney, he would need to remain in custody. The district court responded by saying that Ijong would remain in custody until an attorney was appointed and that the district court would appoint an attorney without waiting for Ijong to apply for an attorney. Ijong then said, "Okay, we can proceed today." In light of "the particular facts and circumstances surrounding the case," *id.* at 275, it does not appear that

Ijong's decision was unduly influenced by his interest in the earliest possible resolution. Rather, it appears that the primary reasons why he waived his right to counsel were, as he said at the admit-deny hearing, he believed that he could represent himself better than an attorney and he wanted to express himself in his own words.

Fourth, Ijong contends that his waiver is invalid on the ground that the district court did not specifically inquire into Ijong's mental health or ask whether he was taking his medications as prescribed. Ijong asserts that the district court should have done so in light of the previous finding of incompetency and Ijong's prior violations for not taking his medications as prescribed. Ijong does not cite any caselaw for the proposition that additional inquiries are required if a defendant has a history of mental illness. He does not assert that he was not competent at the time of the revocation hearing, nor does he identify anything in the record of the hearing that might give rise to doubts about his competence. In any event, the district court *did* make an inquiry into this subject by asking Ijong whether he was thinking clearly and whether he was under the influence of any mood-altering substances. The district court may have intentionally refrained from asking Ijong whether he was taking his medications as prescribed because that was one of the alleged violations to be determined at the hearing. In short, the district court did not err by not making more detailed inquiries into Ijong's mental health.

Thus, the district court did not clearly err by finding that Ijong made a valid waiver of his constitutional right to counsel.

II. Revocation of Probation

Ijong also argues that the district court erred by revoking his probation. Specifically, he argues that the need for his confinement does not outweigh the policies favoring probation.

If a probationer violates one or more conditions of probation, a district court may either continue the probationer on probation or revoke probation and execute the sentence. Minn. R. Crim. P. 27.04, subd. 3(2)(b)(iv)-(v). The supreme court has prescribed a three-step analysis to guide district courts in deciding whether to revoke probation. A district court may revoke probation only if the court (1) designates the specific condition that has been violated, (2) finds that the violations were “intentional or inexcusable,” and (3) finds “that need for confinement outweighs the policies favoring probation.” *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). A district court may find that the third *Austin* factor is satisfied if any of three sub-factors is present: (1) confinement is needed to “protect the public from further criminal activity by the offender,” (2) confinement is necessary to provide treatment, or (3) a further stay of the sentence “would unduly depreciate the seriousness of the violation.” *Id.* at 251 (quoting A.B.A. Standards for Criminal Justice, Probation § 5.1(a) (Approved Draft 1970)). In making these findings, district courts “must seek to convey their substantive reasons for revocation and the evidence relied upon.” *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005). This court applies an abuse-of-discretion standard of review to a district court’s decision to revoke probation. *Id.* at 605.

In this case, Ijong challenges the district court’s decision only with respect to the third *Austin* factor: that the “need for confinement outweighs the policies favoring

probation.” *See Austin*, 295 N.W.2d at 250. The district court found that the third *Austin* factor is satisfied by relying on the third sub-factor. Specifically, the district court stated to Ijong that “to not revoke your probation would unduly depreciate the seriousness not only of these violations, but the prior violations, . . . your whole history of probation.” *Id.* at 251. Before making that finding, the district court noted that Ijong had violated conditions of his probation 11 times, that his probation officer nine times had worked with him instead of recommending revocation of probation, that he had a “fairly serious” violation when he was terminated from a sex-offender-treatment program but his probation officer still did not recommend revocation, and that the current violations were “very serious.” The district court was especially troubled by Ijong’s possession of pornography and his viewing of images depicting partially clothed children.

Ijong argues that the evidence does not support a finding that the third *Austin* factor is satisfied. He contends that, although much of his time on probation was “turbulent,” he was showing progress in his rehabilitation and was taking responsibility for his actions. He further contends that the district court had “other options,” such as additional jail time or a mental-health evaluation.

The record provides ample support for the district court’s determination that not revoking probation would unduly depreciate the seriousness of Ijong’s violations. Ijong had violated conditions of his probation on ten prior occasions, which is a remarkable fact in itself. In addition, Ijong was found to be in possession of pornography and images of partially clothed children, which is a serious violation in light of the fact that he was convicted of second-degree criminal sexual conduct by engaging in sexual penetration of

a four-year-old girl. Furthermore, Ijong had committed three prior violations by accessing pornography. Moreover, he previously had been terminated from a sex-offender-treatment program and, despite being reinstated, had not completed the program at the time of the revocation hearing. The district court had attempted numerous lesser sanctions, including jail time, but none of them proved effective in inducing Ijong's compliance with the conditions of his probation. The district court was well within its discretion when it determined in June 2022 that not revoking Ijong's probation would unduly depreciate the seriousness of his probation violations.

Thus, the district court did not err by revoking Ijong's probation and imposing an executed prison sentence.

Affirmed.