

*This opinion is nonprecedential except as provided by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
A23-0450**

In the Matter of the Welfare of S. D. G., Child.

**Filed September 3, 2024
Affirmed
Slieter, Judge**

Hennepin County District Court
File No. 27-JV-22-87

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public Defender, St. Paul, Minnesota (for appellant S.D.G.)

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

Mary F. Moriarty, Hennepin County Attorney, Morgan D. Kunz, Managing Attorney, Minneapolis, Minnesota (for respondent State of Minnesota)

Considered and decided by Slieter, Presiding Judge; Bjorkman, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this appeal from the district court’s decision revoking appellant’s extended jurisdiction juvenile (EJJ) status and executing her stayed adult prison sentence, appellant argues that the district court abused its discretion by revoking probation when the policies favoring retaining the EJJ supervision outweigh the need for confinement, and that revocation violates appellant’s equal-protection rights because similarly situated males would be sent to the juvenile corrections facility in Red Wing instead of prison. Because

the record supports EJJ revocation under the applicable caselaw, and because the equal-protection arguments are procedurally improper, we affirm.

FACTS

In the early evening of January 7, 2022, Edina police officers were dispatched to a reported robbery and attempted carjacking on Sunnyside Road in Edina. Victim M.R. reported she was sitting in her parked vehicle and plugging in her cellphone to charge when three females approached her. One female, later identified as appellant S.D.G., came to the driver's side of the vehicle, opened the door, and sprayed M.R. in the face with a pink cannister of mace yelling, "Screw you b-tch, we have guns." S.D.G. punched M.R. in the face and maced her again while she and the other females took M.R.'s cellphone and wallet. They unsuccessfully tried to take M.R.'s car keys. A few hours later, police located the three females, along with M.R.'s cellphone, the credit and debit cards from M.R.'s wallet, and a pink cannister of mace, in a stolen vehicle at a Speedway in St. Paul and arrested all three females. One transaction had been made on M.R.'s credit card since it was stolen.

Respondent State of Minnesota charged S.D.G. by delinquency petition with aiding and abetting first-degree aggravated robbery in violation of Minn. Stat. § 609.245, subd. 1 (2020) and moved to have her certified to be prosecuted as an adult. Following a detention hearing, based on her probation officer's recommendation¹ and contrary to the state's request that she be held at the juvenile detention center (JDC), the district court ordered S.D.G. to be placed on electronic home monitoring (EHM) while a certification study was

¹ S.D.G. was on juvenile probation and had been since June 16, 2021.

completed. Over the next few weeks S.D.G. violated her EHM conditions twice, leading to detention at the JDC.

The licensed psychologist who conducted S.D.G.'s certification evaluation and an investigating juvenile probation officer both recommended placing S.D.G. on EJJ² probation. These recommendations were based on, among other things, S.D.G.'s involvement in the juvenile delinquency system dating back to 2020; the tumultuous life S.D.G. has had, including abuse from her father resulting in estrangement and the recent death of her younger brother; S.D.G.'s history of hanging out with a bad peer group; and S.D.G.'s aggressive behaviors and personality and conduct disorders.

On March 29, the adult-certification hearing began and was conducted over the course of six days. During these proceedings, S.D.G. was arraigned for new juvenile counts of felony aiding and abetting first-degree aggravated robbery and gross misdemeanor aiding and abetting financial transaction card fraud, from incidents on November 6, 2021, and the state again moved for adult certification. Before the district court issued its ruling on adult certification, S.D.G. pleaded guilty to the November 6 and January 7 first-degree aggravated robbery charges and, as part of the plea agreement, was placed on EJJ probation with a stayed adult prison sentence of 58 months on one count and 68 months on the other count, concurrent guideline sentences. As part of probation, S.D.G. was ordered to reside at a group home.

² The district court retains juvenile jurisdiction until an individual is 19 years old, but with EJJ, the district court retains jurisdiction until the individual is 21 years old. *See* Minn. Stat. § 260B.193, subd. 5(a)-(b) (2022).

After approximately five weeks, a probation violation was filed, and a probation-violation hearing was held where S.D.G.'s probation officer explained that he allowed S.D.G. a home visit with her mother because she was doing well at the group home and with community-based programming. He told S.D.G. that she could not leave her mother's house unless her mother was with her. But S.D.G. left the house without her mother and was involved in a high-speed police chase that led to S.D.G. sustaining some injuries. S.D.G. admitted the probation violation, and the district court placed her on four weeks of EHM at her group home.

Two weeks later, a second probation violation was filed because S.D.G. left the group home without permission and was suspected of robbing an Uber driver. The district court ordered S.D.G. to remain in custody at the JDC pending probation-violation proceedings. During the violation hearing, S.D.G.'s probation officer explained that S.D.G. "absconded from the group home without permission from probation" and because she left for over 12 hours and was not heard from, she lost her bed at the group home and was not welcome back. At the subsequent contested probation-violation hearing, the district court found there was clear and convincing evidence that S.D.G. violated the terms and conditions of probation when she left the group home, leading to her discharge from the group home, and that the violation was intentional and inexcusable.

During a separate probation-violation dispositional hearing, S.D.G.'s probation officer recommended a residential treatment program and explained that he had made several referrals to various programs for girls in Minnesota, but "all of them declined her based on behaviors in the community, based on behaviors at the JDC, and based on her

level of crimes.” Pending a response from two additional programs, probation recommended either staying at the JDC or going back on EHM subject to services in the community. The district court released S.D.G. from the JDC and placed her back on EHM, reminding S.D.G. that if she violated probation for a third time that she would be facing 68 months in prison. S.D.G. was not accepted into either of the additional treatment programs.

Approximately seven weeks later, S.D.G. was back in the JDC following her arraignment for new third- and fourth-degree assault charges (for assaulting a corrections officer) from a July 7 incident. S.D.G. had since turned 18 and also had an upcoming first appearance for an adult case, another assault of a corrections officer from a July 22 incident. At the request of S.D.G.’s counsel, the district court ordered probation to complete another placement screening, and it was again determined that all placement options had been exhausted. An updated third probation-violation report was filed on October 17, alleging S.D.G. violated probation because of adverse termination from community-based treatment back in August, the new criminal charges, and her lack of contact with probation. The state made a global plea offer that included EJJ probation revocation. S.D.G. rejected the offer.

During a three-day contested probation-revocation hearing, the district court heard testimony from S.D.G.’s probation officer about her history of probation violations and behavior problems. And a lieutenant who oversees two of the “cognitive restructure program” units at Red Wing testified they only take males. Therefore, because S.D.G. is a female, if she was committed to the department of corrections for placement in Red Wing, Red Wing would help find a proper placement elsewhere.

Upon completion of the revocation hearing, the district court revoked EJJ status, finding that the state met its burden of proof and satisfied all of the *Austin* factors. The district court executed the previously imposed sentences and committed S.D.G. to the custody of the commissioner of corrections for placement at the Minnesota women's prison in Shakopee.

S.D.G. appealed, but the appeal was stayed per a joint request of the parties, which we granted. The parties jointly asked the district court to reconsider its decision to revoke S.D.G.'s EJJ status, which the district court declined to do. This appeal was then reinstated.

DECISION

Before revoking EJJ probation and executing an adult sentence, the district court must conduct a three-step analysis: “1) designate the specific condition or conditions [of probation] that were violated; 2) find that the violation[s] [were] intentional or inexcusable; and 3) find that the need for confinement outweighs the policies favoring probation.” *State v. B.Y.*, 659 N.W.2d 763, 768-69 (Minn. 2003) (quoting *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980)). Under the third *Austin* factor, courts balance “the probationer’s interest in freedom and the state’s interest in insuring . . . rehabilitation and . . . public safety” by looking to three subfactors: (1) whether confinement is necessary to protect the public; (2) if the offender needs correctional treatment that can most effectively be provided in confinement; or (3) it would unduly depreciate the seriousness of the violation if probation was not revoked. *State v. Modtland*, 695 N.W.2d 602, 607 (Minn. 2005) (quoting *Austin*, 295 N.W.2d at 250). “The [district] court has broad discretion in determining if there is

sufficient evidence to revoke probation,” and we will reverse such a determination only if there is an abuse of discretion. *Austin*, 295 N.W.2d at 249-50.

S.D.G. argues that the district court’s analysis under *Modtland* was flawed for three reasons: (1) there is nothing in the record showing that S.D.G. would get proper, effective treatment in prison; (2) the seriousness of the probation violations must be analyzed in light of the mitigating circumstances — that S.D.G. has never been offered the appropriate level of treatment and care; and (3) the executed sentence resulting from the EJJ revocation is an equal-protection violation because a male in S.D.G.’s circumstances could go to Red Wing, not an adult prison.

The district court made explicit findings under each of the *Austin* factors. The district court found under the first factor “there is clear and convincing evidence that [S.D.G.] violated the terms of her probation when she . . . failed to successfully complete . . . a court ordered treatment program on August 19, 2022.” Under the second factor, “the Court [found] by clear and convincing evidence that [S.D.G.’s] violation was intentional and inexcusable. [S.D.G.] was aware she was required to successfully complete the [treatment] program . . . as a condition of her probation as indicated to her by the Court and probation.” Under the third factor, “the Court [found] by clear and convincing evidence that the need for confinement outweighs the policies favoring probation” because S.D.G. “needs a secure placement to address her violent behavior, her unresolved trauma and grief, emotional dysregulation, mental health and anger management.”

Under the second subfactor in *Modtland*, the district court found that “[a]ll juvenile community-based interventions and out of home placements have been exhausted” because

S.D.G. “has been declined from secure residential treatment centers both in state and outside of the state of Minnesota” but that the correctional treatment she requires “can most effectively be provided if she is confined.” And under the third *Modtland* subfactor, the district court found that, given the violent underlying offenses for the EJJ probation, the fact that S.D.G. was already on juvenile probation for other felonies before her EJJ designation, the continued violent felony-level offenses she has been accruing, the continued failure to complete programming, and the overall “frequency and intensity of aggressive behaviors,” it would “unduly depreciate the seriousness of the violation[s] if probation were not revoked.” On this record, we discern no abuse of discretion by the district court in its analysis of the *Austin* and *Modtland* factors and its decision to revoke S.D.G.’s EJJ status and execute her sentence.

We next consider the parties’ argument that revocation of EJJ status violated S.D.G.’s equal-protection rights.³ The parties agree that S.D.G.’s equal-protection rights were violated because if she was a male, she could have gone to Red Wing instead of an adult prison.⁴ They argue that female juveniles have fewer options than male juveniles for probationary programming, and the treatment and programming options that do exist for

³ The Equal Protection Clause of both the United States and Minnesota Constitutions guarantees that similarly situated persons are treated alike. Minn. Const. art. I, § 2; U.S. Const. amend. XIV, § 1; *see State v. Cox*, 798 N.W.2d 517, 521 (Minn. 2011). So, to establish an equal-protection claim, an individual must show that similarly situated persons have been treated differently. *Cox*, 798 N.W.2d at 521.

⁴ In district court, the state argued that S.D.G.’s EJJ status should be revoked, and her adult sentence executed, which is what the district court did. The state’s stance has changed on appeal, though it takes no position as to whether the district court properly revoked probation.

female juveniles both while on EJJ probation and in the Shakopee prison are not appropriate for S.D.G. for numerous reasons including her age, behavior, inadequate staffing, and limited openings.

Despite the parties' agreement, this court has an obligation to decide cases according to the law. *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990). And generally, "we will not address a constitutional issue if there is another basis upon which the case can be decided." *Rickert v. State*, 795 N.W.2d 236, 240 (Minn. 2011). Here, the district court made the requisite findings under *Austin* and *Modtland* and, as we discussed above, those findings are all supported by the record. S.D.G.'s long history of juvenile delinquency, probation violations, and her recent adult felony charges, all support revocation. Her progress in community-based programming has been minimal and has not deterred her aggressive and violent behavior. The district court did not abuse its discretion by finding that the need for confinement outweighed the policies favoring probation and by revoking S.D.G.'s EJJ status and executing her sentence.

And even if we considered the equal-protection claims the parties raise, they would not alter our decision. There is no indication that the district court would have made a different decision if S.D.G. was a male. And furthermore, the district court's revocation findings were based on S.D.G.'s probation violations, not her gender. The equal-protection claim the parties raise is about the disparity in programming offered by the commissioner of corrections, over which the district court has no control. This is, in essence, an equal-protection claim against the commissioner of corrections, and the commissioner of corrections is not a party to this proceeding so we cannot address this argument in the

context of this appeal. *See State v. Emerson (In re Leslie)*, 889 N.W.2d 13, 17 (Minn. 2017) (noting that sheriff's absence as a party to the criminal case and inability to assert his interests on a constitutional question caused him injury which there was no adequate remedy).

Because S.D.G. was committed to the commissioner of corrections, it is up to the commissioner to find an appropriate placement for S.D.G. The district court cannot order the commissioner of corrections to use a specific program, let alone order the commissioner of corrections to provide programming that does not exist. We are an error-correcting court, and to reverse the district court's EJJ revocation on an equal-protection violation would require us to exercise supervisory power, a power of the judiciary that is reserved for the supreme court. *State v. Ramey*, 721 N.W.2d 294, 302 n.6 (Minn. 2006); *see State v. Obeta*, 796 N.W.2d 282, 286-87 (Minn. 2011) (explaining the supreme court's "inherent judicial authority"). The purported lack of adequate programming for S.D.G., because of the lack of adequate programming for female juveniles, is beyond the scope of this appeal and is not within this court's authority to correct. *See State v. Schnagl*, 859 N.W.2d 297, 302 (Minn. 2015) (stating that Minn. R. Crim. P. 27.03 does not provide procedure for judicial review of the commissioner of corrections' administrative decisions).

On this record we discern no abuse of discretion by the district court in revoking S.D.G.'s EJJ probation and executing her sentence.

Affirmed.