

*This opinion is nonprecedential except as provided by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
A24-1682**

State of Minnesota,
Respondent,

vs.

Elizabeth Jean Smith,
Appellant.

**Filed June 23, 2025
Affirmed
Worke, Judge**

Winona County District Court
File No. 85-CR-23-241

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

Karin Sonneman, Winona County Attorney, Winona, Minnesota (for respondent)

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

Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant argues that the district court erred by failing to advise appellant of the
rights under Minn. R. Crim. P. 27.04 before revoking probation. We affirm.

FACTS

In June 2023, appellant Elizabeth Jean Smith¹ pleaded guilty to first-degree driving while impaired (DWI). The presumptive sentence was 66 months in prison. Smith moved for a downward dispositional departure. In September 2023, the district court determined that Smith was particularly amenable to chemical-dependency treatment and granted the request for a departure. The district court imposed a 66-month sentence but stayed execution of the sentence for five years. Smith's probation had several conditions, including compliance with, and successful completion of, the Treatment Court of Winona County (TCWC).

In March 2024, a TCWC coordinator filed a violation affidavit alleging that Smith failed to abstain from alcohol and controlled-substance use, failed to attend visits, failed to submit to drug testing, and failed to comply with TCWC. Smith was sent notice of termination proceedings and was advised that probable cause showed that Smith "self-terminated" from TCWC and that reinstatement was "not guaranteed."

On July 25, 2024, the district court held a hearing. The district court advised Smith of the right to a public defender and to appeal any decision. The district court also ensured that Smith understood the length of the prison sentence if executed. Smith stated that, because he believed that TCWC team members wanted the sentence executed, he would choose "to execute [his] sentence as of today and . . . go to prison." The district court stated that there were "no predetermined outcomes" and explained that Smith could have a

¹ According to Smith's brief, sometime after the district court's decision, Smith began identifying using male pronouns.

TCWC-termination hearing, and if terminated from TCWC, have a probation-revocation hearing. Smith consulted with counsel and requested a termination hearing.

The next day, the district court held a contested termination hearing. Smith's attorney stated that Smith had discussed the matter with people he trusts and confides in and decided to request to have the sentence executed. The district court asked Smith if he had sufficient time to discuss the matter and legal rights with counsel. Smith stated that he had sufficient time to consult with counsel. The district court then stated: "[Y]ou have other options here. Those options are to go through with the violation hearing in the treatment court, possibly then [a] . . . probation [revocation hearing]. So you have other options to proceed today. Do you understand that?" Smith indicated understanding. The district court explained: "And you would have a right to contest those hearings, to bring forth witnesses and evidence. And by proceeding today, to request an execution, . . . you're giving up your rights to those contested hearings. Do you understand that?" Smith indicated understanding and decided to "give up" the rights to a contested hearing.

The district court asked: "Is it your request then for the [c]ourt to execute your sentence in this matter?" Smith replied: "Yes." The district court stated that it was "satisfied that [Smith] is cognizant of what . . . [he] is requesting the [c]ourt to do, what the consequences will be. The [c]ourt has gone over with [him], as has [his] attorney, regarding other options that [he] has." The district court revoked Smith's probation and executed the sentence. This appeal followed.

DECISION

Smith argues that the district court failed to advise him properly of the rights under Minn. R. Crim. P. 27.04, subd. 2 before revoking probation and executing the sentence. This court reviews Smith's failure-to-advise claim for plain error because Smith did not bring any alleged error to the attention of the district court. *See* Minn. R. Crim. P. 31.02 (stating that "[p]lain error affecting a substantial right can be considered . . . on appeal even if it was not brought to the [district] court's attention"); *State v. Beaulieu*, 859 N.W.2d 275, 281 (Minn. 2015). Under the plain-error doctrine, Smith must establish (1) an error, (2) that is plain, and (3) that affects substantial rights. *See State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). If Smith shows plain error, this court "may correct the error only if it seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings." *See State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001) (quotation omitted). This analysis does not focus on whether the error harmed the case on review; rather, the focus of the fairness-and-integrity analysis is on whether "failing to correct the error would have an impact beyond the current case by causing the public to seriously question whether our court system has integrity and generally offers accused persons a fair trial." *Pulczynski v. State*, 972 N.W.2d 347, 356 (Minn. 2022).

At a probation-revocation hearing, a district court must

[t]ell the probationer of the right to:

- a. a lawyer, including an appointed lawyer if the probationer cannot afford a lawyer;
- b. a revocation hearing to determine whether clear and convincing evidence of a probation violation exists and whether probation should be revoked;

- c. disclosure of all evidence used to support revocation and of official records relevant to revocation;
- d. present evidence, subpoena witnesses, and call and cross-examine witnesses, except the court may prohibit the probationer from confrontation if the court believes a substantial likelihood of serious harm to others exists;
- e. present mitigating evidence or other reasons why the violation, if proved, should not result in revocation;
- f. appeal any decision to revoke probation.

Minn. R. Crim. P. 27.04, subd. 2(1)(c). Smith contends that the district court failed to advise of these rights, and the failure to do so establishes plain error. *See Beaulieu*, 859 N.W.2d at 282 (stating that plain error is established if the error contravenes a rule of criminal procedure). The state contends that, while the district court's advisory lacked formality, the district court adequately explained the rights to Smith. We agree.

Here, the district court advised Smith of the right to a public defender. The district court advised Smith of the right to a probation-revocation hearing "to make an argument . . . about why [he] should be on probation and why [he] should not be sent to prison." The district court advised Smith: "[Y]ou would have a right to contest [the termination and revocation] hearings, to bring forth witnesses and evidence." The district court asked Smith: "Are you asking to waive your right to a contested probationary hearing where you could argue that your probation should not be revoked? Meaning that you should be on probation and not in prison." The district court stated: "I want to make sure that you and I are absolutely clear. You can have another judge, and you can have a probation violation hearing." Finally, the district court advised Smith of the right to appeal any decision. We conclude that the district court properly advised Smith of his rights, and that Smith has

failed to show plain error. But even if Smith had established plain error, Smith fails to show that any error affected substantial rights.

Smith argues that his substantial rights were affected because if the district court had explained the rights, and Smith understood them, he would have had a contested hearing.

Here, at the hearing on July 26, 2024, the district court asked Smith's attorney if she and Smith discussed Smith's "legal rights and the proceeding." Smith's attorney stated that Smith discussed the matter with confidants and wanted to request execution of the sentence. The district court reviewed Smith's options. And Smith indicated that he understood that he could have a TCWC-termination hearing and then a probation-revocation hearing. Smith decided to "give up" the rights to a contested hearing. The district court stated that it was satisfied that Smith was "cognizant" of what he was requesting and of the consequences of that decision. Smith does not explain how a more formal advisory of rights would have resulted in him requesting a contested hearing when he explicitly waived a contested hearing several times during the two hearings before the district court. *See id.* The record supports our conclusion that Smith understood his rights. Smith has failed to show that the district court committed plain error that affected his substantial rights, and therefore, we do not consider whether it is necessary to correct any error to ensure fairness and integrity of the proceeding.

Affirmed.