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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1714**

State of Minnesota,
Respondent,

vs.

Erik Dupree Solorio,
Appellant.

**Filed May 5, 2014
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-08-56483

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Veronica M. Shacka, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Worke, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the district court's revocation of his probation, arguing that the court erred by determining that the need for confinement outweighs the policies favoring probation. We affirm.

FACTS

In 2009, appellant Erik Dupree Solorio was convicted of first-degree criminal sexual conduct. The district court sentenced him to 144 months' imprisonment followed by a ten-year conditional release period. But the district court granted a downward dispositional departure, stayed execution of Solorio's sentence, placed him on probation for ten years, and ordered him to complete sex-offender treatment as a condition of probation.

The district court found that Solorio violated the terms of his probation on three separate occasions prior to initiation of the underlying revocation proceeding: in March 2010 for failing to live at his registered address; in February 2011 for being discharged from sex-offender treatment for tardiness, absenteeism, and dishonesty; and in November 2011 for having a picture of female genitalia on his cellular telephone. In each instance, the district court continued Solorio on probation and required him to serve jail time as a consequence for his violation. The district court warned Solorio that additional violations could lead to revocation of his probation.

In April 2013, Solorio was discharged from sex-offender treatment for tardiness, absenteeism, and violating a behavior contract by lying about the reason for an absence.

Following a contested hearing, the district court found that Solorio violated the terms of probation, that the violation was intentional and inexcusable, and that Solorio is not amenable to probation. The district court executed Solorio's 144-month prison sentence. This appeal follows.

D E C I S I O N

“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). Before the district court may revoke a defendant's probation and execute a stayed sentence, 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.” *State v. Modtland*, 695 N.W.2d 602, 606 (Minn. 2005) (quoting *Austin*, 295 N.W.2d at 250). The third factor is satisfied if the district court finds that “(i) confinement is necessary to protect the public from further criminal activity by the offender; or (ii) the offender is in need of correctional treatment which can most effectively be provided if he is confined; or (iii) it would unduly depreciate the seriousness of the violation if probation were not revoked.” *Austin*, 295 N.W.2d at 251 (quotation omitted).

Solorio argues that the district court abused its discretion when it concluded that the third *Austin* factor is satisfied because it failed to consider “several important mitigating factors: [his] treatment and housing opportunities.” He argues that his failure to complete sex-offender treatment is due to his homelessness and “significant cognitive

impairments.” Solorio further argues that “[t]here were a number of intermediate sanctions that the district court could have given [him] instead of revoking his probation” and that “the most meaningful sanction would have been a court order to cooperate with a structured, supervised housing program that would allow [him] to continue working in sex[-]offender treatment.” Solorio notes that his treatment provider indicated a willingness to accept him back in the program if he were to reside in supervised housing. Thus, Solorio argues, he did not “fail” treatment such that his probation should be revoked” and the district court “reflexively” revoked his probation. *See id.* (“The decision to revoke cannot be a reflexive reaction to an accumulation of technical violations but requires a showing that the offender’s behavior demonstrates that he or she cannot be counted on to avoid antisocial activity.” (quotation omitted)). We are not persuaded.

The record establishes that Solorio was aware that his failure to complete sex-offender treatment could lead to execution of his 144-month prison sentence. But after four years on probation, he had only completed two steps of his four-step treatment program and had been discharged from the program twice for absenteeism and dishonesty. There is little reason to believe that Solorio’s placement in supervised housing at this time would make a difference in his performance in treatment. While Solorio was on probation, his probation officer arranged his placement in structured housing programs two times. Each time, Solorio entered the program but left after several months. Solorio’s probation officer found supervised housing for Solorio a third time, but Solorio “decided that it was too structured for him” and did not enter the

facility. After four years of working with Solorio, his probation officer testified that Solorio is not amenable to probation and, as an untreated sex offender, is a danger to the public.

“The [district] court has broad discretion in determining if there is sufficient evidence to revoke probation.” *Id.* at 249. Solorio had multiple opportunities to reside in supervised housing while participating in sex-offender treatment and two opportunities to complete sex-offender treatment. It was reasonable for the district court to conclude that treatment has failed, Solorio is not amendable to probation, and the need for confinement outweighs the policies favoring probation. *See id.* at 251 (“The 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.”); *State v. Moot*, 398 N.W.2d 21, 24 (Minn. App. 1986) (affirming revocation based on failure to complete court-ordered chemical-dependency treatment), *review denied* (Minn. Feb. 13, 1987); *State v. Hemmings*, 371 N.W.2d 44, 47 (Minn. App. 1985) (affirming revocation based on failure to complete court-ordered sex-offender treatment).

Affirmed.