STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1882

State of Minnesota,
Respondent,

vs.

Ronald Jose Brewer, Jr.,
Appellant.

Filed August 12, 2019
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-CR-13-29093

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

Michael O. Freeman, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Halbrooks, Presiding Judge; Bjorkman, Judge; and Klaphake, Judge.*

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

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

Appellant challenges the revocation of his probation for third-degree criminal sexual conduct, arguing that the district court abused its discretion by determining that his need for confinement outweighs the policies favoring probation. We affirm.

FACTS

In November 2014, appellant Ronald Jose Brewer, Jr. pleaded guilty to third-degree criminal sexual conduct for vaginally penetrating a sleeping woman. The district court accepted Brewer's guilty plea and sentenced him in accordance with a plea agreement, staying a 180-month prison term for up to ten years. This was a downward-dispositional departure based on the parties' agreement and the desire to spare the victim from testifying at trial. The probation conditions required Brewer to (1) refrain from using alcohol and controlled substances, (2) submit to a chemical-health assessment and follow the assessment recommendations, and (3) successfully complete sex-offender treatment.

In March 2016, Brewer's probation officer filed a probation-violation report after Brewer tested positive for cocaine use and left chemical-dependency treatment. The probation officer recommended that Brewer complete chemical-dependency treatment. The district court continued Brewer on probation with the same terms and conditions.

In June, the probation officer filed another probation-violation report, citing Brewer's arrest for a new criminal-sexual-conduct offense and failure to complete chemical-dependency treatment. After a contested hearing, the district court found that Brewer intentionally and inexcusably violated his probation by failing to complete

chemical-dependency and sex-offender treatment. The district court ordered him to serve 365 days at a local correctional facility, complete chemical-dependency treatment while in custody, and complete sex-offender treatment once released. Brewer completed chemical-dependency treatment and entered the Alpha residential sex-offender treatment program after he was released from custody. But approximately one year later, Alpha discharged Brewer from its program.

In February 2018, the probation officer filed a probation-violation report alleging Brewer failed to successfully complete sex-offender treatment. At Brewer's request, the district court continued the evidentiary hearing so Brewer's attorney could explore other sex-offender-treatment options. In August 2018, following a three-day contested hearing, the district court found that Brewer intentionally and inexcusably violated his probation. And the court found that "[c]onfinement is necessary to protect the public from further criminal activity by [Brewer] because he is an untreated sex offender and because he continued to threaten other people, including residents and staff." The district court revoked Brewer's probation, executed his 180-month sentence, and imposed ten years of conditional release. Brewer appeals.

D E C I S I O N

A district court has broad discretion to determine whether there is sufficient evidence to revoke probation, and its decision is reversed only if the court clearly abuses that discretion. *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). Before revoking an offender's probation, a district court must find that (1) a specific probation condition was violated, (2) the violation was intentional or inexcusable, and (3) the need for

confinement outweighs the policies favoring probation. *Id.* at 250; *see State v. Modtland*, 695 N.W.2d 602, 606 (Minn. 2005) (citing *Austin*). In assessing the third factor, the district court should consider whether (1) confinement is necessary to protect the public from further criminal activity, (2) the offender needs correctional treatment that can most effectively be provided in prison, or (3) reinstating probation would unduly depreciate the seriousness of the violation. *Modtland*, 695 N.W.2d at 607. Revocation must not be "a reflexive reaction to an accumulation of technical violations." *Austin*, 295 N.W.2d at 251 (quotation omitted).

Brewer challenges only the findings related to the third *Austin* factor: that the need for his confinement outweighs the policies favoring probation. He argues that confinement is unnecessary because he was not involved in physical altercations, did not engage in new criminal activity, had positively progressed through three of the four treatment phases, and other treatment options are available in the community. We are not persuaded.

First, the record supports the district court's finding that confinement is needed to protect the public. Brewer's therapist testified that Brewer broke treatment rules and threatened other residents and staff members on numerous occasions during the year he participated in Alpha's treatment program. His rule violations included threatening and making hurtful statements to residents, selling items to residents, and charging residents for haircuts. Eleven residents reported feeling physically or emotionally unsafe around him. Brewer also had many verbal altercations with Alpha staff. On one occasion, Brewer observed a staff member enter a password into a computer. When she asked him if he was trying to obtain the password, Brewer became irate and verbally aggressive with her, then

physically engaged a resident who tried to intervene. Following his termination from the program, Brewer continued to harass Alpha staff, threatened to sue Alpha, and made false accusations about staff members having sexual relations with a resident. And Brewer threatened his therapist, stating, "I will get you bitch."

Second, the record supports the district court's conclusion that Brewer "is in need of correctional treatment, which can only be provided if he is confined at the Department of Corrections." At Brewer's request, the district court continued the probation-revocation hearing for six months to allow defense counsel to coordinate Brewer's admission into another treatment program. This effort was unsuccessful. Based on the evidence presented during the hearing, the district court found that no community-based sex-offender treatment program is willing to accept Brewer. The department of corrections has a sex-offender treatment program.

In short, the district court's decision to revoke Brewer's probation was not "a reflexive reaction to an accumulation of technical violations." *Austin*, 295 N.W.2d at 251 (quotation omitted). Brewer is an untreated sex offender. Despite nearly four years of considerable support from his probation officer and warnings from the district court, Brewer has not completed perhaps the most important aspect of his probation for his criminal-sexual-conduct conviction—sex-offender treatment. The district court fully analyzed the *Austin* factors, making detailed supported findings that Brewer's need for confinement outweighs the policies favoring probation. On this record, we discern no abuse of discretion by the district court in revoking Brewer's probation.

Affirmed.