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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2237**

State of Minnesota,
Respondent,

vs.

Sanders Moore, Jr.,
Appellant.

**Filed August 15, 2011
Affirmed
Stoneburner, Judge**

Hennepin County District Court
File Nos. 27CR06078253, 27CR07042944

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Cathryn Middlebrook, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Stoneburner, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges the revocation of his probation as an abuse of discretion, arguing that the evidence did not show that the need for confinement outweighs the policies favoring probation. We affirm.

FACTS

In 2008, appellant Sanders Moore, Jr. pleaded guilty in separate cases to (1) first-degree burglary; (2) third-degree burglary; and (3) receiving stolen property. Moore was sentenced to 57 months in prison for first-degree burglary, 27 months for third-degree burglary, and 19 months for receiving stolen property. The sentence for receiving stolen property was discharged due to credit for time served. Execution of the remaining sentences was stayed, and Moore was placed on probation with conditions, including completion of programs to which he was referred related to chemical dependency or mental-health issues, abstinence from alcohol and illegal drugs, random drug and alcohol testing, and payment of restitution in the amount of \$125. The sentences represented a downward dispositional departure from the sentencing guidelines. The departure was based on Moore's mental-health issues and need for treatment.

In 2010, a revocation hearing was held on allegations that Moore had violated the conditions of probation by failing to abstain from illegal drugs, failing to comply with his mental-health therapy, failing to take prescribed medications, failing to pay restitution, and failing to remain law abiding. The district court found that Moore's explanations of the alleged violations were not credible and that Moore intentionally and inexcusably

violated specific conditions of probation. The district court noted on the record that there was no policy favoring probation in this case because the guidelines presumed commitment to prison. But the district court nonetheless found that the need for confinement outweighs any policies favoring probation. In support of this finding, the district court cited falsehoods Moore told to his probation officer; Moore's refusal to accept services or placement, failure to take responsibility for the offenses, and verbal abuse of his probation officer; and Moore's testimony "before the Court in a way that confirms what the probation officer said about his manipulation and falsehoods and ultimately established that he has such a negative perception of his probation officer that no probation could possibly work." The district court also noted that new charges against Moore involved a "person offense." The district court revoked Moore's probation and executed the sentences. This appeal followed.

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). In making a decision to revoke a stay of sentence, the district court must (1) designate the specific condition or conditions of probation violated; (2) find that the violation was inexcusable or intentional; and (3) determine whether the need for confinement outweighs the policies favoring probation. *Id.* at 250. The state must prove a violation of probation by clear and convincing evidence. Minn. R. Crim. P. 27.04, subd. 3(1); *see* Minn. R. Crim. P. 27.04, subd. 2(1)(c)b (describing probationer's right to "a revocation hearing to determine

whether clear and convincing evidence of probation violation exists and whether probation should be revoked”).

Moore argues that the district court abused its discretion by revoking his probation because the revocation hearing in 2010 was his first revocation hearing, and he had done well on probation for more than a year and a half. Moore asserts that he should have been given the opportunity to continue his mental-health treatment and have a chemical-dependency evaluation done. But the record supports the district court’s findings about Moore’s poor attitude toward his probation officer, his refusal to accept services or placements, and his failure to take responsibility for his actions. And these findings support the finding that Moore’s probation violations were intentional and inexcusable, Moore appears to ask this court to reject the district court’s credibility determination with regard to his explanations about how the violations occurred, but this court defers to the district court’s credibility determinations. *State v. Losh*, 694 N.W.2d 98, 102 (Minn. App. 2005), *aff’d*, 721 N.W.2d 886 (Minn. 2006).

Moore specifically challenges the district court’s finding that probable cause exists to support the then-pending charges of domestic assault by strangulation and terroristic threats. Moore asserts that these new charges were brought to cover up the fact that the complainant had robbed and beaten him and that the violation of the condition that he remain law abiding was not proven by clear and convincing evidence because he had not been convicted of the charges. The district court found that Moore had failed to remain law abiding based on the criminal complaint, the testimony of Moore’s probation officer about the conversation she had with the complainant, and Moore’s lack of credibility in

his explanation of the incident. Even if this evidence, absent a conviction, was not sufficient to support a finding that Moore violated the condition of probation that he remain law abiding, Moore's other probation violations support revocation.

Moore argues that the district court did not appropriately determine that the need for confinement outweighs the policies favoring probation in this case. Specifically, Moore argues that the district court's comment on the record that there was no policy favoring probation in this case demonstrates that the district court was acting reflexively and not exercising the conscientious judgment required to support revocation. *See State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005) (stating that the three-step process used in deciding whether to revoke probation "prevents courts from reflexively revoking probation when it is established that a defendant has violated a condition of probation"). We disagree.

Moore's argument ignores the district court's explicit articulation of the factors that led it to conclude that the need for confinement in this case outweighs any policy favoring probation: falsehoods Moore told his probation officer; his refusal to accept services or placement; his failure to take responsibility for the offenses; his verbal abuse of his probation officer; and his testimony "before the Court in a way that confirms what the probation officer said about his manipulation and falsehoods, and ultimately established that he has such a negative perception of his probation officer that no probation could possibly work."¹

¹ Appellant also filed a pro se supplemental brief. The pro se brief makes no discernible new arguments and merely offers explanations for this incident and his other probation

Because the district court made the required findings, supported by the record, that Moore intentionally and inexcusably violated specific conditions of probation and found that the need for confinement outweighs any policy favoring probation, we conclude that the district court did not abuse its discretion by revoking Moore's probation and executing his sentences.

Affirmed.

violations that appear to be the same explanations he presented to the district court. He also asserts that his probation officer lied to the district court at the revocation hearing. But we defer to the district court for such credibility determinations. *Losh*, 694 N.W.2d at 102.