STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0008

State of Minnesota,
Respondent,

vs.

Jeffrey Alan Paulson,
Appellant.

Filed December 9, 2008
Affirmed
Crippen, Judge*

Anoka County District Court
File No. 02-K9-99-007490

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Robert M.A. Johnson, Anoka County Attorney, Kathryn M. Timm, Assistant County Attorney, Suite 720, Anoka County Government Center, 2100 Third Avenue, Anoka, MN 55303-5025 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Cathryn Middlebrook, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Connolly, Presiding Judge; Minge, Judge; and Crippen, Judge.

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* 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

CRIPPEN, Judge

Appellant Jeffrey Paulson challenges the district court's decision to revoke his probation. Finding no merit in his claim that the evidence was insufficient to support the revocation, we affirm.

FACTS

Appellant pleaded guilty to two counts of second-degree assault with a dangerous weapon in February 2000. The assaults occurred in August 1999; appellant, while under the influence of alcohol, stabbed a man twice with a knife and threatened to stab another man. The district court sentenced appellant to a 42-month stayed sentence on the first count and a consecutive 21-month executed sentence on the second count, but the parties agreed and the court ordered that appellant serve his time on the second count first. Under this arrangement, the court also imposed ten years' probation to begin after the 21-month sentence, anticipating that the 42-month stayed sentence would influence him to obey the terms of his probation.

After serving time for the second count, appellant was released on probation in June 2001. He violated the conditions of his probation in August 2004 by failing to pay restitution and failing to abstain from alcohol. As a result of probation violations, the district court imposed an intermediate sanction of 90 days in jail.

Appellant violated his probation again in August 2006 by consuming alcohol and using several illegal drugs. After finding that appellant had violated his probation, the district court decided to "delay disposition" and keep appellant in jail for 30 days while

his attorney arranged for him to participate in an inpatient treatment program. The district court revisited the matter on November 20, 2006, after appellant's attorney made arrangements for his inpatient treatment. The court agreed to "delay disposition and furlough him into treatment" but required that appellant "come back into the jail . . . after the furlough." Appellant completed the inpatient treatment program in December 2006 but tested positive for cocaine one month later and soon thereafter failed aftercare. He did not appear at a scheduled February hearing and was finally brought before the district court in April 2007. The court scheduled another disposition hearing in May and set bail, but appellant again failed to make an appearance and forfeited his bond. Appellant finally appeared for a disposition hearing in October. At this hearing, the district court revoked Appellant's probation and executed his 42-month sentence on the first count.

D E C I S I O N

Before probation can be revoked, the district court must designate the specific violations, find them intentional and inexcusable, and find that the need for confinement outweighs the policies favoring probation. *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980).[1] The 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."

[1] We are mindful of the dicta in *State v. Modtland* suggesting that a district court's findings are inadequate if they do not identify the substantive reasons for revocation and the evidentiary support for the findings. 695 N.W.2d 602, 608 (Minn. 2005). Appellant does not argue that the articulation of findings was insufficient. It is undisputed that the final probation-revocation hearing was a continuation of several previous hearings. Viewed together, the transcripts from these hearings document the substantive reasons and evidentiary support for the revocation.

Id. at 249-50. The record supports the district court's findings stated to comply with the mandates of *Austin*.

Appellant does not challenge the district court's finding that he violated specific conditions of his probation. The record demonstrates that in October 2006 appellant admitted to using drugs and alcohol in violation of his probation, violations aggravated by the fact that he tested positive for cocaine in both January and April 2007.

Similarly, the record supports the district court's finding that appellant's violations were inexcusable. Appellant has been given numerous opportunities to comply with probationary conditions. When violations prompted a 90-day jailing in 2004, the court decided against revocation but warned appellant that the "next stop is prison." Again in 2006, after further alcohol and drug violations, appellant was given the opportunity to participate in an inpatient treatment program. It was only after appellant failed in this final treatment attempt that his probation was revoked. The only excuse that appellant offered for his behavior was that he had lost custody of his children.

Finally, the record supports findings as required by *Austin* that "confinement is necessary to protect the public," that "the offender is in need of correctional treatment which can most effectively be provided if he is confined," or that "it would unduly depreciate the seriousness of the violation if probation were not revoked." *Austin*, 295 N.W.2d at 251. The district court made all three of these determinations when it stated:

> [A]t some point when . . . the system can't rehabilitate an individual, my obligation is just to protect public safety. It would disproportionately depreciate the seriousness of your violation if I didn't execute your sentence. Your violations

> were inexcusable, serious, and significant on a very serious charge. I can't ignore it.

Appellant's sentence was for two counts of second-degree assault that arose out of use of a knife in August 1999. At the subsequent sentencing hearing, the stabbing victim testified that appellant's offense left him partially paralyzed, unable to hold his newborn child, unable to work, and suffering from depression. Appellant submitted a letter at the sentencing hearing implying that he would not have committed the assaults if he had been sober. Appellant's attorney stated, "He knows for the rest of his life he is one drink away from prison. He knows that. He knows he can never drink again." Despite recognition of this weakness, the record also demonstrates that appellant has been unsuccessful in a treatment program and that he continued to drink and use drugs despite receiving warnings. This evidence sufficiently supports the findings that appellant's confinement is necessary to protect the public, create a further opportunity for effective treatment, and recognize the seriousness of appellant's violations.

Because its findings are supported by the record, the district court did not abuse its discretion when it revoked appellant's probation.[2]

Affirmed.

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[2] Appellant also asserts that the sentencing court erred by imposing consecutive sentences out of the order in which the offenses occurred and by failing to state the reasons for the double upward departure on the first count. Because this issue was not raised in the district court, we have no occasion to address it on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (establishing that appellate courts will not review issues that were not first argued, considered, and decided in district court). Appellant's argument that he could not (when sentenced in 2000) relinquish his right to be sentenced under the Minnesota Sentencing Guidelines is refuted by *State v. Givens*, 544 N.W.2d 774, 777 (Minn. 1996), and *Hutchinson v. State*, 679 N.W.2d 160, 162 (Minn. 2004).