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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0424**

State of Minnesota,
Respondent,

vs.

Tyler Henry Boser,
Appellant.

**Filed December 10, 2018
Affirmed
Bjorkman, Judge**

Otter Tail County District Court
File Nos. 56-CR-15-1531, 56-CR-16-1259, 56-CR-16-1590, 56-CR-16-1747

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

Michelle Eldien, Otter Tail County Attorney, Fergus Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer L. Lauermann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Bjorkman, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges the revocation of his probation and execution of his sentences on multiple felony convictions. We affirm.

FACTS

Appellant Tyler Henry Boser was charged with multiple felonies for conduct that occurred in 2015 and 2016. Boser, who had a criminal-history score of six, agreed to plead guilty to felony domestic assault, gross-misdemeanor assault of a peace officer, two felony harassment-restraining-order violations, and second-degree burglary. In exchange, the state agreed to stayed sentences totaling 78 months and a five-year probationary term that included 365 days of jail time. The plea agreement recognized that imposition of stayed sentences constituted a dispositional departure that offered Boser “one last opportunity” to avoid serving prison time, and was supported only by Boser’s “amenability to treatment . . . based upon [his] admission to, and completion of the 13-15 month Teen Challenge Program.” The district court sentenced Boser in accordance with the plea agreement in January 2017.

On March 28, 2017, the Minnesota Department of Corrections (DOC) filed a probation-violation report. Boser entered Teen Challenge in Brainerd on February 8, but left the program one week later after learning that he was subject to an arrest warrant in North Dakota for a probation violation. Boser disregarded the advice of his probation agent to stay in the program and the agent’s warning that he would be in violation of his probation if he left. Boser returned to Teen Challenge on February 20 but was discharged six days later for “[o]ngoing infractions with tobacco and failure to comply with program policy and rules.” Following a hearing, the district court found that Boser had violated the terms of his probation, imposed 49 days in jail for the violation, and reinstated his probation under the original terms.

The DOC issued a second probation-violation report on September 8, alleging that Boser violated his probation by failing to complete Teen Challenge. Boser was unsuccessfully discharged from Teen Challenge in Rochester for “lack of program participation and unwillingness to invest into change while . . . in the program.” The report states that Boser “continues to do as he pleases, manipulate those around him, blame others, and disregard the court’s orders regardless of his consequences,” and that he “clearly has no intention to change, to be supervised, or follow through with his court orders as displayed by his behaviors laid out in the . . . discharge report.” Teen Challenge’s discharge report lists ten program infractions since July that include hiding cigarettes and lying about it, obtaining a smuggled SIM card, hiding food and burned CDs in his room, becoming upset about a room search, entering a restricted area to look for items hidden with the SIM card, repeatedly violating the direction to stay in his room, abusing medication by concealing pills to take them all at once “to get a buzz,” hiding a forbidden cell phone, and obtaining social media contact via unauthorized sources.

At the second probation-violation hearing, Boser admitted that he violated probation by being unsuccessfully discharged from Teen Challenge. After hearing testimony from Boser and his probation agent, the district court found that Boser’s violation was intentional and inexcusable, and that Boser was not amenable to probation. The district court revoked Boser’s probation and executed each of the sentences. Boser appeals.

D E C I S I O N

“A 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. Ornelas, 675 N.W.2d 74, 79 (Minn. 2004) (quotation omitted). The state must prove the offender violated probation terms by clear and convincing evidence. Minn. R. Crim. P. 27.04, subd. 3; *Ornelas*, 675 N.W.2d at 79. When revoking probation, a district court must specify the conduct or conditions that the probationer violated, find the violation was intentional or inexcusable, and determine the need for confinement outweighs the policies favoring probation. *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980); see *State v. Modtland*, 695 N.W.2d 602, 606 (Minn. 2005) (citing *Austin*). Revocation must not be “a reflexive reaction to an accumulation of technical violations.” *Austin*, 295 N.W.2d at 251 (quotation omitted); see *Modtland*, 695 N.W.2d at 608 (requiring the district court to “seek to convey [its] substantive reason[] for revocation and the evidence relied upon”).

Boser only challenges the district court’s finding on the third *Austin* factor. He argues that because he “had reformed his life and could have continued in treatment,” the need to confine him is outweighed by the policies favoring probation. As support for this argument, he cites statements his attorney made to the district court during the second probation-violation hearing, asserting that Boser suffers from mental illness as well as chemical dependency. And he contends that the district court’s revocation of his probation was “reflexive.” We are not persuaded.

First, the only record evidence that Boser has mental-health issues dates back to September 2016. At that time, defense counsel moved for a mental-competency evaluation under Minn. R. Crim. P. 20.01 and 20.02, based on Boser’s “intention to assert a defense

of mental illness or mental deficiency.”¹ After an evaluating psychologist issued a report opining that Boser was competent under either standard, Boser withdrew the motion. In contrast, Boser’s undisputed need to complete chemical-dependency treatment has been at the core of this case since the beginning. Indeed, the stated purpose and only ground for the agreed-to probationary sentence was to allow Boser “one last opportunity” to succeed in intensive chemical-dependency treatment. Boser’s chemical dependency was the primary focus of the presentence-investigation report, the two probation-violation reports, and the court hearings.

Second, we disagree with Boser’s contention that his conduct amounted to mere “technical violations” and the district court’s revocation of his probation was merely “reflexive.” At the second probation-violation hearing, the district court received evidence of Boser’s long-standing chemical abuse, his manipulative behavior, and his recurring criminal behavior dating back to his childhood. Rather than constituting minor violations, Boser’s conduct while on probation demonstrates an unabated pattern of disregard for programming and district court orders. At the end of the first probation-violation hearing, the district court sternly warned Boser not to leave or be discharged from the Teen Challenge program. Boser again disregarded Teen Challenge policies and failed to engage in programming. As the district court summed up before revoking Boser’s probation,

¹ Boser’s appellate brief cites “exhibit 1” as a compilation of mental-health reports he submitted at the second probation-violation hearing. The exhibit was not received as evidence so we do not consider it. *See* Minn. R. Civ. App. P. 110.01 (“The documents filed in the [district] court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases.”).

“Your amenability [to probation] was based solely on your amenability to complete the treatment at Teen Challenge, and you’ve sabotaged that.”

In *State v. Moot*, this court affirmed probation revocation when the record demonstrated that “a downward dispositional departure [was] the sole reason of affording appellant one last opportunity to succeed in treatment for chemical dependency,” but the probationer refused “to comply with the program and participate in his recovery.” 398 N.W.2d 21, 24 (Minn. App. 1986), *review denied* (Minn. Feb. 13, 1987). Likewise, Boser received stayed sentences only to promote his stated intention to complete treatment at Teen Challenge. His persistent failure to do so—even when given another opportunity after his first probation violation—defeats Boser’s contention that the policies favoring probation outweigh the need for confinement. Accordingly, we discern no abuse of discretion in the district court’s revocation of Boser’s probation. *See State v. Hemmings*, 371 N.W.2d 44, 47 (Minn. App. 1985) (affirming revocation when the probationer was “unamenable to treatment” because of his refusal to comply with a treatment program).

Affirmed.