STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0313

State of Minnesota,
Respondent,

vs.

Terrance Trevelle Hill,
Appellant.

Filed October 14, 2019
Reversed and remanded
Jesson, Judge

Dakota County District Court
File No. 19HA-CR-13-520

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

James C. Backstrom, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and Bratvold, Judge.

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

JESSON, Judge

After pleading guilty to one count of criminal sexual conduct pursuant to a plea agreement, appellant Terrance Trevelle Hill received a stayed sentence and fifteen years of

probation. After Hill violated his probation conditions, the district court revoked Hill's probation. Hill now challenges his sentence and that revocation. Because Hill's challenges to his sentence are not properly before this court, we decline to address Hill's arguments pertaining to it. But because the district court's findings are insufficient to support the revocation of Hill's probation, we reverse and remand.

FACTS

In February 2013, the state charged appellant Terrance Trevelle Hill with two counts of first-degree criminal sexual conduct with a person under the age of 13. The charges stemmed from D.S.'s disclosure that Hill sexually abused her several years earlier when she was between six and eight years old.[1] The case proceeded to a jury trial, which resulted in a hung jury.

Before proceeding to a second trial, the state offered Hill a plea agreement. Pursuant to the agreement, in exchange for Hill pleading guilty to one count of first-degree criminal sexual conduct, the state offered to dismiss a separate criminal-sexual-conduct charge stemming from allegations made by a different victim, and recommend a stay of execution of a top-of-the-box guidelines sentence of 187 months. At the plea hearing, Hill pleaded guilty to sexual contact with a person under age 13, acknowledging that the offense

[1] According to D.S., Hill—a family friend—entered her bedroom and asked her if she wanted to play a game. Thinking that Hill meant a board game, D.S. agreed. Hill then took off his pants and D.S.'s pants, exposed his penis to her, and placed his penis in D.S.'s vagina or anus and moved back and forth. D.S. expressed that it hurt. Once Hill stopped, he told D.S. not to tell her parents what happened. D.S. alleged that this happened a second time, but she could not remember all the details.

occurred between January 1, 2006 and December 31, 2008. The district court accepted Hill's plea and adjudicated him guilty.

At sentencing, the district court addressed an issue raised in the presentence investigation regarding the offense date. New sentencing guidelines had gone into effect on August 1, 2006. But the date of the offense that Hill pleaded guilty to spanned from January 1, 2006 to December 31, 2008, making it unclear which version of the sentencing guidelines should apply.[2] The district court therefore asked Hill to stipulate that the offense occurred "in the fall of 2006; therefore, after August 1, 2006" so that the 2006 sentencing guidelines would apply, making the agreed-upon 187-month sentence within the permissible range of sentences. Hill agreed and acknowledged that he did not know the exact offense date. Then, the district court sentenced Hill in accordance with the plea agreement: a stay of execution of 187 months and 15 years of probation.[3]

Almost three years later, the state alleged that Hill violated his probation. The district court ordered Hill to serve 30 days in jail but reinstated his probation with the same conditions. Hill violated his probation again about two years later, and the district court directed Hill to serve 120 days in jail but again reinstated his probation with the same terms and conditions.

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[2] The 2005 and 2006 versions of the sentencing guidelines differ in the permissible sentence for Hill. The 2006 guidelines contemplate a sentence within the range of 144 months to 187 months for first-degree criminal sexual conduct for an offender with a criminal-history score of one.

[3] Hill's sentence constituted a downward dispositional departure, which the district court stated was due to Hill being amenable to probation and willing to participate in sex-offender treatment.

Roughly seven months later, Hill appeared at a probation-revocation hearing after the state alleged that he violated his probation for a third time. The state asserted that Hill violated five conditions of his probation: failing to submit to urinalysis testing, failing to abstain from the use of illegal drugs, failing to enter inpatient chemical-dependency treatment, failing to complete sex-offender treatment, and failing to maintain contact with probation. At the hearing, Hill admitted to violating all five of the identified conditions of his probation. Through testimony, Hill explained that he had tried to enter inpatient chemical-dependency treatment but was not admitted and that financial reasons were preventing him from completing sex-offender treatment. Hill also testified that he had not knowingly ingested illegal drugs but had eaten candy which apparently contained them. Hill noted that he was usually good about keeping in contact with his probation officer but acknowledged that he had recently missed some appointments.

The state sought revocation of Hill's probation and execution of his sentence. The district court agreed. The court stated that it thought "the *Austin* factors . . . [were] pretty clear" and that "there comes a time when if you are not meeting the requirement of probation for serious crimes that your sentence need[s] to be executed." The district court also found that Hill's continued substance usage and failure to complete sex-offender treatment indicated that the needs of the community outweighed the preference for treatment and that not revoking Hill's probation would "unduly depreciate the system." Accordingly, the district court ordered Hill's 187-month sentence to be executed, followed by a 10-year conditional-release period. Hill appeals.

D E C I S I O N

Hill challenges both his sentence and the revocation of his probation. Specifically, Hill contends that his original sentence was calculated using an incorrect criminal-history score and that the district court selected an offense date with the express purpose of giving him a longer sentence in violation of his rights under *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004). But the state argues that Hill's challenges to his sentence—raised for the first time as part of his probation-revocation appeal—are not properly before this court. As such, we first examine whether Hill's challenges to his sentence are properly before us, and conclude that—having never been presented to the district court—they are not. We then evaluate Hill's argument that the district court did not make sufficient findings to support revocation of his probation. And because the district court's findings are insufficient, we reverse and remand.

I. Hill's challenges to his sentence, imposed pursuant to a plea agreement, are not properly before this court.

The state presents two arguments that Hill's challenges to his sentence are not properly before this court. First, relying on *State v. Coles*, 862 N.W.2d 477, 481-82 (Minn. 2015), the state argues that Hill must challenge his sentence through postconviction proceedings because it was imposed as part of a plea agreement. Alternatively, the state contends that if Hill may challenge his sentence as part of probation-revocation proceedings, he is required to first raise his challenges to his sentence to the district court. We first review the procedural mechanisms available for an offender to challenge his or her sentence, and then turn to address each of the state's arguments.

In general, an offender may collaterally challenge a sentence in two alternative ways. *Washington v. State*, 845 N.W.2d 205, 210 (Minn. App. 2014). First, under rule 27.03, subdivision 9 of the Minnesota Rules of Criminal Procedure, an offender may request that the district court "correct a sentence not authorized by law." Second, an offender can file a petition for postconviction relief. *Id.*; *see* Minn. Stat. § 590.01 (2018).

But a third way for an offender to challenge a sentence—often referred to as a *Fields* appeal—has emerged in the probation-revocation context based on *State v. Fields*, 416 N.W.2d 734, 736 (Minn. 1987). In *Fields*, the supreme court held that an offender can challenge his or her sentence for the first time after his or her probation is revoked. 416 N.W.2d at 736. In reaching this decision, the supreme court noted important policy reasons for allowing challenges to a sentence after probation is revoked, stating that requiring a direct appeal at the time a sentence is imposed could lead to an increase in sentencing appeals. *Id.* Without the opportunity to challenge a sentence after revocation of probation, an offender who believed he might be successful with probation may be compelled to appeal a questionable sentence in order to protect himself from serving an improper sentence in the event his probation is revoked. *Id.*

Although these three methods are generally available to challenge a sentence, the state, relying on *Coles*, argues that Hill must challenge his sentence through a petition for postconviction relief. In *Coles*, the supreme court recognized that "a challenge to a sentence imposed as part of a plea agreement involves more than simply the sentence." 862 N.W.2d at 481; *see also State v. Lewis*, 656 N.W.2d 535, 539 (Minn. 2003). For instance, in certain plea agreements, "the conviction component and the sentence

component are interrelated." *Coles*, 862 N.W.2d at 481 (quotation omitted). And in those cases, "[i]f the defendant succeeds in reducing his or her sentence, he or she retains the benefit of the reduced criminal charge but the [s]tate no longer receives the benefit of the longer sentence." *Id.* Accordingly, the supreme court determined that the proper mechanism to challenge a sentence that implicates a plea agreement is a petition for postconviction relief. *Id.* at 482. The state contends that because Hill's sentence was imposed pursuant to a plea agreement, *Coles* dictates that he may only challenge his sentence through a postconviction petition.

But the supreme court has not yet applied *Coles* to challenges to a sentence that arise in the probation-revocation context. And, because we can resolve this appeal without doing so, we decline to decide whether *Coles* mandates that an offender who wishes to challenge a sentence imposed pursuant to a plea agreement after his or her probation has been revoked may only do so through a postconviction petition.

Declining to address the state's argument under *Coles*, we turn to the state's second argument that Hill's challenges to his sentence are not properly before this court: that to properly challenge a sentence as part of a *Fields* appeal, Hill needed to raise his sentencing arguments at the probation-revocation hearing in district court. We agree.

Assuming that Hill may challenge his sentence pursuant to *Fields*, we conclude that Hill did not follow the procedural requirements. We read *Fields*, in light of the rationale provided in *Coles*, as requiring a challenge to a sentence which was imposed as part of a plea agreement to be raised first at the district court level. This requirement allows both the state and the offender the opportunity to consider plea withdrawal, consistent with the

supreme court's rationale in *Coles*. Further, first addressing the challenges to a sentence at the district court level provides the opportunity for development of a record regarding any factual issues surrounding the plea agreement.

Indeed, *Fields* appears to implicitly require raising a challenge to a sentence after the revocation of probation during the probation-revocation hearing. The appellant in *Fields* moved for a modification of his sentence at the district court probation-revocation hearing and then appealed the denial of that motion. *Fields*, 416 N.W.2d at 735. And the supreme court concluded that the "defendant properly raised the sentencing issue *at the revocation hearing* and that the court of appeals erred in refusing to decide that issue on appeal." *Id.* (emphasis added). We thus read *Fields*, while permitting a challenge to a sentence as part of probation-revocation proceedings, as requiring a challenge to a sentence to first be presented to the district court for a ruling before appellate review is appropriate.

Nothing in the record indicates that Hill raised his challenges to his sentence to the district court as part of his probation-revocation hearing. And Hill's case illustrates why raising sentencing challenges to the district court is important. In order to address his challenges to his sentence, Hill essentially asks us to make a factual determination about when the district court concluded his offense occurred: in the fall of 2006 or sometime after August 1, 2006. And this court does not serve as a fact-finder. *Wright Elec., Inc. v. Ouellette*, 686 N.W.2d 313, 324 (Minn. App. 2004), *review denied* (Minn. Dec. 14, 2004). Had Hill raised his arguments at his probation-revocation hearing, the district court could have made factual findings, which we could then review. But Hill failed to do so. Accordingly, we conclude that because he did not challenge his sentence

at the probation-revocation hearing, Hill's sentencing challenges are not appropriately before us under a *Fields* appeal, and decline to address his arguments.[4]

II. The district court failed to make sufficient findings to support the revocation of Hill's probation.

Hill contends that the district court did not make adequate findings to support revoking his probation. District courts have broad discretion to determine whether sufficient evidence exists to revoke probation, and we only reverse a district court's decision for a clear abuse of discretion. *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). But it is a question of law whether the district court made the required findings to revoke probation, which we review de novo. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

Before revoking probation, the district court must make three specific findings. *Austin*, 295 N.W.2d at 250. 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." *Id.* Further, when evaluating the third factor, district courts should additionally consider whether "(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

[4] We note that part of Hill's challenge to his sentence involves an assertion that his sentence is based on an incorrect criminal-history score. But we conclude that in order to challenge a sentence, which is the result of a plea agreement, as part of a *Fields* appeal, Hill must first present his challenges to his sentence to the district court.

of the violation if probation were not revoked." *Id.* at 251. As previously stated by the supreme court, "[t]he decision to revoke [probation] 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." *Id.* (quotations omitted). And in making findings to support revoking probation, the district court "must seek to convey [the] substantive reasons for revocation and the evidence relied upon." *Modtland*, 695 N.W.2d at 608.

Here, the district court made sparse findings before revoking Hill's probation. The entirety of the district court's rationale is provided here:

> Okay. Mr. Hill, to not keep you in suspense, I'm going to let you know my intent is to vacate the stay of execution and have you execute the sentence.
>
> And the reason is I think that the *Austin* factors that were mentioned by both defense and the State in this case are pretty clear, in my mind, that there comes a time when if you are not meeting the requirement of probation for serious crimes that your sentence need[s] to be executed. This is obviously a serious crime. The continuation of the use of a controlled substance as well as the failure to complete sex offender treatment indicate that the needs of the community outweigh the normally the favor of treatment within the community.
>
> And a third violation on a serious felony would unduly depreciate the system unless the sentence was executed.
>
> Therefore, I will revoke the stay of execution. Sentence you to commit to the Commissioner of Corrections for a period of 187 months.

We conclude that these findings are insufficient to support revoking Hill's probation. Even if we construe the district court's mention of "the continuation of the use of a controlled

substance" and "the failure to complete sex offender treatment" as a finding that Hill violated those conditions of probation, there is no mention of the second factor—whether the violation was intentional or inexcusable—in the district court's analysis. Additionally, the district court's finding that "a third violation on a serious felony would unduly depreciate the system unless the sentence was executed" does not adequately address the third factor: whether the need for confinement outweighs the policies favoring probation. *Austin*, 295 N.W.2d at 250. Caselaw is clear that district courts must *explicitly* make the three required findings before revoking probation. *See Modtland*, 695 N.W.2d at 608. That was not done here.

The state acknowledges that the district court did not use the terms intentional or inexcusable, but argues that Hill admitted to the violations and that the record supports a finding that the violations were intentional. But this argument conflicts with the mandate in *Austin* and *Modtland* that the district court must make findings on the identified factors. 295 N.W.2d at 250; 695 N.W.2d at 608.[5] And it is not this court's role to find evidence in the record to justify a probation revocation. *Modtland*, 695 N.W.2d at 608 (stating that "it is not the role of appellate courts to scour the record to determine if sufficient evidence exists to support the district court's revocation"). Accordingly, we reverse the revocation of Hill's probation and remand for the district court to make additional findings.

Reversed and remanded.

[5] The state cites an unpublished case from this court in support of its argument, but our unpublished opinions are not precedential. Minn. Stat. § 480A.08, subd. 3 (2018).