STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0899

State of Minnesota,
Respondent,

vs.

Jesus Daniel Ibarra,
Appellant.

Filed December 23, 2019
Affirmed
Reilly, Judge

Watonwan County District Court
File Nos. 83-CR-17-333, 83-CR-18-516, 83-CR-17-617

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

Stephen J. Lindee, Watonwan County Attorney, St. James, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Bjorkman, Judge; and Cochran, Judge.

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

REILLY, Judge

Appellant challenges the district court's order revoking his probation and executing his stayed prison sentences. We affirm.

FACTS

In June 2017, the state charged appellant Jesus Daniel Ibarra with three counts of assault for striking and kicking an 80-year-old man in the ribs, arm, and head. The victim suffered multiple bone fractures and a subdural hemorrhage. In August 2018, appellant entered a plea of guilty to one count of first-degree assault. In exchange for appellant's plea, the state agreed to dismiss the remaining charges and to recommend a stay of execution of a 117-month prison sentence, which represented a departure from the sentencing guidelines. Appellant acknowledged that he assaulted the victim, but stated that he was under the influence of drugs at the time of the assault. The district court imposed a 117-month prison sentence, stayed execution of the sentence, and placed appellant on supervised probation for 15 years.

During this same time period, the state filed two additional criminal complaints against appellant. In December 2017, the state charged appellant with two drug-related offenses. Appellant entered a plea of guilty to fifth-degree controlled-substance crime and the district court dismissed the remaining charge, stayed adjudication of appellant's sentence, and placed him on probation. In September 2018, the state charged appellant with another fifth-degree controlled-substance crime and five other charges. Appellant entered a plea of guilty to drug possession and the remaining five charges were dismissed. The district court imposed but stayed a prison sentence and placed appellant on probation.

In February 2019, appellant was arrested for failing to comply with the requirements of probation in his three criminal cases. Appellant admitted to violating his probation by using mood-altering chemicals and failing to comply with the requirements of probation.

The district court revoked appellant's probation and executed his stayed prison sentences in each of the three cases. This appeal follows.

D E C I S I O N

Appellant challenges the district court order revoking his probation and executing his stayed prison sentences. When an offender violates a condition of probation, the district court may revoke probation and execute the previously stayed sentence. Minn. Stat. § 609.14, subds. 1, 3 (2018). 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).

To revoke probation, the district court must (1) identify the specific conditions of probation that were violated, (2) find that the violations were intentional or inexcusable, and (3) find that the need for confinement outweighs the policies favoring probation. *Id.* at 250. In making these *Austin* findings, district courts "must seek to convey their substantive reasons for revocation and the evidence relied upon." *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005). Whether the district court made the required *Austin* findings is a question of law, which we review de novo. *Id*. 605. Appellant only challenges the third factor on appeal: whether the need for confinement outweighs the policies favoring probation. Appellant argues that confinement is unnecessary because this is his first probation violation and community resources are available to treat his mental-health and chemical-dependency issues.

In assessing the third *Austin* factor, district courts 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. *Id*. at 607. Revocation must not be "a reflexive reaction to an accumulation of technical violations." *Austin*, 295 N.W.2d at 251 (quotation omitted).

Here, the district court made specific factual findings on the third *Austin* factor. First, the district court found that confinement is necessary to protect the public because appellant committed a "horrendous assault" while under the influence of controlled substances. The district court expressed its "extreme public safety concerns" regarding appellant's continued use of controlled substances. The district court reasoned that appellant is "unable to control [his] controlled substance use," and that "confinement is necessary to protect the public from further criminal activity." The record supports the district court's findings. The probation officer filed a probation-violation report asserting that appellant had not met with his officer since being released from jail and was "making zero progress on his probation conditions." On one occasion, the probation officer spoke with appellant and noted that he "was slurring his words as if he was under the influence of something." Appellant later admitted to using controlled substances on a daily basis since his release from jail. The record supports the district court's finding that confinement is necessary to protect the public from further criminal activity.

Second, the district court found that appellant "is in need of correctional treatment which can be most effectively provided during confinement." Appellant argues that he would benefit from community-based treatment to address his mental-health and chemical-dependency issues. But the record reveals that appellant participated in inpatient and

outpatient community treatment from 2011 to 2016. The district court noted that it had initially been "reluctant" to accept the plea deal in August 2018. However, the district court agreed to accept the deal and depart from the sentencing guidelines based, in part, on counsel's representation that a plea agreement would allow appellant to address his mental-health and chemical-dependency issues. Although appellant had several opportunities to take advantage of community-based services, he failed to do so. Therefore, we discern no abuse of discretion in the district court's determination that appellant is in need of correctional treatment that can most effectively be provided in prison.

Lastly, the district court found "that it would unduly depreciate the seriousness of the violation if probation were not revoked." Appellant does not challenge the seriousness of his probation violations or of the underlying assault crime. Instead, appellant argues that the district court could have altered the terms of his probation instead of executing his sentences. When an offender whose sentence was initially stayed violates any of the conditions of probation, the district court, in its discretion, may revoke probation or impose intermediate sanctions. *See* Minn. R. Crim. P. 27.04, subd. 3(2)(b) (authorizing district court to continue an existing stay of imposition and order probation, impose a sentence but stay execution and order probation, impose and execute a sentence, continue an existing stay of execution and order probation, or execute a sentence). While the district court could have imposed intermediate sanctions, it was not required to do so. The district court did not abuse its discretion by revoking appellant's probation and executing his sentences.

For these reasons, we determine that the record supports the district court's decision to revoke appellant's probation. The district court's decision was not a "reflexive reaction

to an accumulation of technical violations." *Austin*, 295 N.W.2d at 251 (quotation omitted). Instead, the record demonstrates that the district court carefully analyzed each of the three *Austin* factors and made detailed findings that the need for confinement outweighs the policies favoring probation. *Id*. at 250. Accordingly, we determine that the district court did not abuse its discretion by revoking appellant's probation, and we affirm.

Affirmed.