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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1257**

State of Minnesota,
Respondent,

vs.

Lee Daniel Williams,
Appellant.

**Filed March 30, 2020
Affirmed
Reilly, Judge**

Ramsey County District Court
File No. 62-K1-05-003833

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Connolly, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

REILLY, Judge

In this appeal from an order revoking probation, appellant argues that the order must be reversed because (1) the district court abused its discretion by admitting hearsay

evidence at the probation-revocation hearing over his objection without analyzing whether it was necessary and reliable, and (2) the record does not support the district court's findings that the alleged violation was intentional or inexcusable and that the need for confinement outweighed the policies favoring probation. Because the district court did not plainly err when it admitted hearsay evidence and the record supports the district court's findings, we affirm.

FACTS

In November 2005, appellant Lee Daniel Williams was charged in Ramsey County District Court with one count of possession of firearm by an ineligible felon in violation of Minn. Stat. § 624.713, subd. 1 (2004). Following a court trial, the district court found appellant guilty of the charged offense. At sentencing, appellant received a downward dispositional departure. He was sentenced to 60 months' imprisonment, execution of which was stayed for 15 years, and appellant was placed on probation.

In October 2017, Ramsey County Community Corrections (RCCC) filed its first probation-violation report, alleging that appellant failed to abstain from the use of drugs, failed to report for urinalysis testing, and failed to enter chemical dependency treatment as recommended by his rule 25 evaluation. In February 2018, appellant admitted to the violations. The district court reinstated him on probation and set a review hearing in August 2018 to address early discharge from probation if appellant completed treatment and had no positive urinalysis tests.

In July 2018, RCCC filed a second probation violation report, alleging that appellant violated the conditions of his probation when he failed to appear for drug testing, failed to

abstain from the use of drugs, failed to complete chemical dependency treatment (he was unsuccessfully discharged from Resurrection Recovery), and failed to enter a chemical dependency treatment program after discharge from Resurrection Recovery. In August 2018, appellant admitted to the first three violations and RCCC agreed to dismiss the remaining alleged violation. Appellant was reinstated on probation and ordered to complete treatment and aftercare. As an intermediate sanction for the violations, the district court ordered appellant to complete 365 days in the Ramsey County Correctional Facility (the correctional facility). The district court also ordered appellant to complete an updated chemical use assessment.

Appellant began his 365-day sentence on September 5, 2018, and obtained a chemical health assessment on September 27, 2018. The assessor recommended that appellant complete the Day One Treatment Program by Restoration Counseling and Community Services (DORS treatment program) while at the correctional facility. Appellant subsequently appealed the assessment. Appellant started the DORS treatment program on December 12, 2018, and was unsuccessfully discharged on December 19, 2018, for refusing services, refusing to participate in any treatment planning, and per his request to be discharged from the program. Appellant wrote a letter to the district court in March 2019, requesting that he be released from the correctional facility in order to attend a different treatment program. The district court denied appellant's request and indicated that appellant should contact his probation officer.

In April 2019, RCCC filed a third violation report, alleging that appellant violated the conditions of his probation when he failed to complete chemical dependency treatment

while in custody at the correctional facility. Appellant denied the allegation and the district court held a contested probation-revocation hearing. At the hearing, appellant testified that after receiving the recommendation to complete the DORS treatment program, he talked to others who were involved in the treatment program and determined that it was not a good fit for him. Appellant testified that he made multiple attempts to arrange other treatment options while in the correctional facility, including calling his probation officer, asking his case worker and friends to call his probation officer on his behalf, contacting other treatment facilities, and requesting that the district court allow him to be released from the correctional facility early to attend a different treatment program. Appellant's probation officer testified that appellant was unsuccessfully discharged from the DORS treatment program after attending for seven days, that appellant refused the services offered to him, did not perceive a need for services to prevent future substance use, refused to participate in treatment planning, asked to be discharged from the program, and indicated that he wished instead to execute his sentence.¹ Following the probation-revocation hearing, the district court issued an order revoking appellant's probation and executing his 60-month sentence. This appeal follows.

¹ The probation officer relied on information contained in the DORS treatment program discharge summary (the discharge summary). The discharge summary is a confidential court document not accessible by the public.

DECISION

I. The district court did not plainly err when it admitted hearsay evidence without first finding that it was necessary and reliable.

a. Standard of Review

Appellant argues that the district court abused its discretion when it admitted hearsay evidence over his objection without first finding that it was necessary and reliable, resulting in a violation of appellant's due process and confrontation rights. The hearsay evidence at issue is the discharge summary testified to by appellant's probation officer who did not author the discharge summary.

The parties disagree about which standard of review applies. Appellant argues that this court must apply the abuse-of-discretion standard of review. Conversely, the state argues that this court should review the district court's admission of the hearsay evidence for plain error because appellant did not "put the prosecutor or [the district court] on notice of the particular argument that he now raises on appeal."

Typically, "[e]videntiary rulings rest within the sound discretion of the district court, and [appellate courts] will not reverse an evidentiary ruling absent a clear abuse of discretion." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). However, "[a]ppellate review of an evidentiary issue is forfeited when a defendant fails to object to the admission of evidence." *State v. Vasquez*, 912 N.W.2d 642, 649 (Minn. 2018). And, "unless . . . a timely objection or motion to strike appears of record, stating the *specific ground* of objection, if the specific ground was not apparent from the context," appellate courts will not consider

the challenge to the admission of the evidence. *State v. Rossberg*, 851 N.W.2d 609, 617-18 (Minn. 2014) (emphasis added).

Here, appellant objected to the admission of evidence on hearsay grounds when the probation officer testified about the contents of the discharge summary. The state argued that the rules of evidence do not apply to probation-revocation hearings, and the district court overruled the objection and admitted the discharge summary into evidence. Appellant did not specifically object that the admission of the hearsay evidence violated his rights under the Confrontation Clause or Due Process Clause. And, given that appellant's objection consisted only of "[o]bjection, hearsay," and nothing more, it is not apparent from the context of the objection that the Confrontation or Due Process Clauses were the specific grounds for appellant's challenge. Accordingly, because appellant failed to object specifically, and therefore failed to preserve his challenge under either the Confrontation Clause or Due Process Clause, we review the district court's admission of the hearsay evidence for plain error. *See id.* (concluding that plain-error analysis applied where appellant did not object specifically under the Confrontation Clause and it was not apparent from the context of the objection that the Confrontation Clause was the specific ground for the objection).

b. Plain Error Review

For an appellate court to review an unobjected-to error, there must be "(1) error; (2) that is plain; and (3) the error must affect substantial rights. If these three prongs are met, the appellate court then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings." *State v. Griller*, 583 N.W.2d 736, 740 (Minn.

1998). “An error is plain if it is clear or obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct.” *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotation omitted). “Under the plain-error doctrine, an ‘error’ is a ‘deviation from a legal rule [] unless the rule has been waived.’” *State v. Kelley*, 855 N.W.2d 269, 274 (Minn. 2014) (citation omitted). An error is considered plain if it is “clear or obvious.” *State v. Reed*, 737 N.W.2d 572, 583 (Minn. 2007) (quotation omitted).

Appellant argues that even under plain-error review, this court must reverse because the district court erroneously admitted the hearsay evidence, the error was plain, and the error affected appellant’s substantial rights. Appellant acknowledges that the rules of evidence generally do not preclude the admission of hearsay evidence in probation revocation proceedings. Minn. R. Evid. 1101(b)(3). However, appellant relies on *State v. Johnson*, 679 N.W.2d 169 (Minn. App. 2004) to argue that the district court erred when it admitted the discharge summary without first analyzing whether it was reliable and necessary. Appellant misconstrues this court’s holding in *Johnson*. In *Johnson*, this court considered whether a probation officer’s letter was inadmissible hearsay evidence at the probation revocation proceeding. *Id.* at 173. After reviewing caselaw from other states, we concluded that “when the defendant has had ample opportunity to present evidence in a probation revocation proceeding, the rules of evidence do not preclude admission of hearsay evidence, such as a letter reporting that defendant violated the terms of probation.” *Id.* at 174.

The record shows that appellant testified and presented other evidence at the hearing. Accordingly, under *Johnson*, the district court did not plainly err when it admitted

the discharge summary without having analyzed whether it was necessary and reliable. Because we conclude that the district court did not plainly err, we need not address the final prong under the plain-error analysis. *See State v. Sanchez-Sanchez*, 879 N.W.2d 324, 330 (Minn. 2016) (“If the district court did not plainly err, then we need not address whether appellant’s substantial rights were affected.”).

c. Credibility Determinations

Appellant also argues that even if the discharge summary was admissible, the “district court clearly erred by over-relying on it to the detriment of the live testimony.” Appellant relies on *Andersen v. State*, 913 N.W.2d 417 (Minn. 2018) to argue that the district court erred when it “implicitly found” that the discharge summary was credible because, under *Andersen*, district courts cannot make credibility determinations based on affidavits alone. Appellant mischaracterizes the holding of *Andersen*. In *Andersen*, the supreme court determined that the postconviction court erred when it found two affidavits unreliable. *Id.* at 423-24. The supreme court, concluding that the district court made “improper credibility determinations . . . reiterate[d] that, when considering a postconviction petition, a postconviction court cannot make credibility determinations without first holding an evidentiary hearing.” *Id.* at 424. The holding in *Andersen* is not that district courts cannot make credibility determinations based on affidavits, it is that the district court cannot make credibility determinations *without first holding an evidentiary hearing*. Even if the holding in *Andersen* was directly applicable here, this case is distinguishable. Here, a probation-revocation hearing was held and the parties were allowed to present live-witness testimony and other evidence. At the conclusion of the

hearing, the district court weighed the credibility of all the evidence, including appellant's testimony. The district court found the discharge summary and the probation officer's testimony more credible than appellant's testimony, which is within its province as the fact-finder. *See DeMars v. State*, 352 N.W.2d 13, 16 (Minn. 1984) ("The credibility of witnesses and the weight to be given their testimony are determinations to be made by the factfinder."). Accordingly, we reject appellant's argument.

II. The district court did not abuse its discretion in finding that the probation violation was intentional or inexcusable and that the need for confinement outweighs the policies favoring probation.

Appellant contends that the district court abused its discretion when it found that the probation violation was intentional and inexcusable and that the need for confinement outweighed the policies favoring probation. Before revoking probation, 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 need for confinement outweighs the policies favoring probation." *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). "The purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed." *Id.* District courts have "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." *Id.* at 249-50.

Appellant appears to concede that the district court properly designated the specific conditions that were violated under the first *Austin* factor. Appellant instead challenges the district court's finding under factors two and three.

Appellant argues that while the district court found that the violation was “intentional and without excuse” under the second *Austin* factor, this finding is not supported by the record because although “leaving one particular program may have been an intentional choice, the record shows that [appellant] sought appropriate treatment before and after.” Appellant is correct that the record reflects that he appealed the recommendation of the chemical use assessment and that he wrote a letter to the district court requesting that he be allowed to attend a different treatment facility. Appellant is also correct that he testified that he made multiple attempts to arrange other treatment options because he did not think the DORS treatment program was a good fit. However, the district court did not find appellant’s testimony credible and we defer to those credibility determinations. *See State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992) (recognizing that the “credibility of witnesses and the weight to be given their testimony are determinations to be made by the factfinder” and district court’s credibility determinations are “accord[ed] great deference” (citation and quotation omitted)). The district court appears to have found that appellant’s violation of the condition was intentional and inexcusable because he “opted out of the program when he refused to attend and indicated that he did not believe he needed the services for future use prevention.” The district court made its findings in the context of appellant’s probation violations. The first probation violation report was filed in October 2017 and alleged drug use by the appellant. In February 2018, appellant admitted the violations and was given the opportunity to be discharged early from probation, in August of 2018, if he completed drug treatment and had no positive urinalysis tests. Instead, a second probation violation report was filed in

July 2018, alleging that appellant continued to use drugs and failed to complete treatment. By the time of the August 2018 probation review hearing, appellant had not successfully completed drug treatment or abstained from drug use. Appellant was out of custody during this time and could have attended a number of treatment programs. Appellant's own behavior during the pendency of the probation violation proceedings, the discharge summary, and the probation officer's testimony support the district court's finding that appellant's violation was intentional or inexcusable.

Appellant also challenges the district court's determination under the third required *Austin* factor. When considering the third *Austin* factor, the district court must "balance the probationer's interest in freedom and the state's interest in insuring his rehabilitation and the public safety." *State v. Modtland*, 695 N.W.2d 602, 607 (Minn. 2005) (quotation omitted). The district court should 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 of the violation if probation were not revoked." *Id.*

Here, the district court determined that allowing appellant to remain untreated in the community while actively refusing treatment would depreciate the seriousness of the violation if appellant's probation were not revoked. Appellant argues that the record does not support this finding because he "actively sought other options both before and after trying [the DORS treatment] program," he testified that he wanted treatment, and there is evidence in the record corroborating his testimony. As noted previously, the district court

did not find appellant's testimony credible, and we defer to the district court's credibility determinations. Moreover, the discharge summary and the probation officer's testimony again support the district court's finding that the need for confinement outweighs the policies favoring probation.

Affirmed.