

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0030**

State of Minnesota,
Respondent,

vs.

Michael Allan Headbird,
Appellant.

**Filed July 6, 2020
Reversed and remanded
Larkin, Judge**

Cass County District Court
File No. 11-CR-16-1954

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

Benjamin T. Lindstrom, Cass County Attorney, Walker, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Veronica M. Surges, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Rodenberg, Judge; and Frisch,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the revocation of his felony probation, arguing that the district court failed to provide an impartial judicial officer at his probation-revocation proceedings. We reverse and remand for new probation-revocation proceedings before a different judicial officer.

FACTS

In March 2017, appellant Michael Allan Headbird pleaded guilty to first-degree burglary with a dangerous weapon. The district court sentenced him to 75 months of imprisonment, stayed execution of the sentence, and placed him on probation for five years. The district court imposed a number of probationary conditions, including that he not consume alcohol.

In the two years after sentencing, Headbird violated his probationary conditions numerous times. The district court imposed sanctions, including local jail time, but it did not revoke Headbird's probation.

In April 2019, the probation department filed a violation report alleging that Headbird had consumed alcohol, and Headbird admitted this allegation on June 3, 2019. The district court scheduled a disposition hearing and allowed Headbird to be furloughed from jail for a diagnostic assessment. Headbird allegedly absconded and did not return to jail after his assessment. On August 30, the probation department filed a violation-report addendum alleging that Headbird had violated probation by committing a felony escape-from-custody crime and by testing positive for methamphetamine and amphetamine.

On October 10, 2019, Headbird appeared for a probation-revocation hearing. The prosecutor informed the district court that because Headbird had already admitted to violating the terms of his probation by consuming alcohol, the prosecutor did not intend to present evidence regarding the new probation violations set forth in the August 30 addendum. The prosecutor asked to proceed to disposition on Headbird's admitted violation of consuming alcohol. The following exchange ensued between the district court and the prosecutor:

DISTRICT COURT: So Lieutenant Thompson is not available to testify?

PROSECUTOR: I don't know.

DISTRICT COURT: So you made no effort to determine that—whether he would be available to testify?

PROSECUTOR: I made the decision that I didn't think I wanted to present evidence on that issue.

DISTRICT COURT: What if I order you to present evidence on that issue? What are you going to do?

PROSECUTOR: Probably pursue a writ of prohibition.

DISTRICT COURT: Then I suggest you do that because I'm ordering you to do that right now.

After locating Lieutenant Thompson in the courthouse, the district court called the officer to the stand, placed him under oath, and questioned him regarding Headbird's failure to return to jail after his furlough. Based on its examination of the officer, the district court found that there was clear and convincing evidence that Headbird had violated probation by committing the new offense of escape from custody, as alleged in the violation-report addendum. The district court revoked Headbird's probation and executed his 75-month prison term. This appeal follows.

DECISION

Headbird seeks reversal of his probation revocation based upon the district court judge's conduct at the probation-revocation hearing. The state declined to file a brief in this matter, noting that it had "nothing to add" to Headbird's arguments.

The United States Constitution guarantees criminal defendants the right to be tried before an impartial jury, and the United States Supreme Court has long recognized the right to a trial before an impartial judge. *State v. Dorsey*, 701 N.W.2d 238, 249 (Minn. 2005) (citing *Rose v. Clark*, 478 U.S. 570, 577, 106 S. Ct. 3101, 3106 (1986)). Likewise, the Minnesota Supreme Court has "long recognized that a criminal defendant has a fundamental right to a fair trial before an impartial judge." *Id.* at 252.

As to probation-revocation proceedings, states must provide individuals facing probation revocation with a neutral and detached hearing body to determine contested relevant facts and consider whether revocation is warranted. *See Gagnon v. Scarpelli*, 411 U.S. 778, 781-82, 93 S. Ct. 1756, 1759-60 (1973) (holding that probationers are entitled to due-process protections required for parolees); *Morrissey v. Brewer*, 408 U.S. 471, 489, 92 S. Ct. 2593, 2604 (1972) (requiring body that finds facts and determines whether to revoke parole to be neutral and detached). Due process requires that a probation-revocation hearing be held before an impartial fact-finder. *State v. Cleary*, 882 N.W.2d 899, 904 (Minn. App. 2016). Whether a district court deprived a probationer of his due-process rights presents a question of law, subject to de novo review. *Id.*

To be impartial, the fact-finder must base its conclusions on "the facts in evidence" and must not reach conclusions "based on evidence sought or obtained beyond that adduced

in court.” *Dorsey*, 701 N.W.2d at 249-50. A judge may not independently investigate a fact not introduced into evidence or seek to obtain evidence beyond that presented by the parties. *Id.* at 250. Rule 2.9(C) of the Minnesota Code of Judicial Conduct prohibits judges from independently investigating facts and requires judges to consider “only the evidence presented and any facts that may properly be judicially noticed.”

A structural error is one that affects “the constitution of the trial mechanism” to such a degree that harmless-error review is not possible and reversal is required. *Id.* at 252-53 (quotation omitted). “[W]hen a defendant has been deprived of an impartial judge, automatic reversal is required.” *Id.* at 253. In *Dorsey*, the supreme court concluded that a structural error occurred when a district court judge, sitting as fact-finder in a court trial, openly questioned the truthfulness of a statement made by a defense witness and independently investigated and reported to counsel facts about the case. *Id.*

The conduct in this case was certainly as egregious as that in *Dorsey*. The district court judge here essentially acted as a de facto prosecutor, calling a witness and eliciting testimony to prove an alleged probation violation. The judge then relied on that testimony to revoke Headbird’s probation. Reversal is required.¹

“A judge must not preside at a trial or other proceeding if disqualified under the Code of Judicial Conduct.” Minn. R. Crim. P. 26.03, subd. 14(3). “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.” Minn. Code Jud. Conduct Rule 2.11(A). A judge’s impartiality is reasonably

¹ We certainly appreciate the district court’s frustration with the prosecutor, but that frustration does not excuse the district court’s failure to provide an impartial fact-finder.

questioned when a “reasonable examiner, with full knowledge of the facts and circumstances, would question the judge’s impartiality.” *State v. Finch*, 865 N.W.2d 696, 703 (Minn. 2015) (quotation omitted).

A reasonable examiner would question the district court judge’s impartiality in any probation-revocation proceedings in this case on remand. We therefore reverse and remand for probation-revocation proceedings before a different judicial officer. *See Cleary*, 882 N.W.2d at 901 (remanding for further probation-revocation proceedings with a different judge); *State v. Moe*, 479 N.W.2d 427, 430 (Minn. App. 1992) (remanding for reassignment to a different judge and instructing new judge to either resentence defendant or allow him to withdraw his guilty plea), *review denied* (Minn. Feb. 10, 1992).

Reversed and remanded.