

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1454**

State of Minnesota,
Respondent,

vs.

Donald Eugene Scaife,
Appellant.

**Filed July 12, 2021
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-CR-18-7374

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Cochran, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Donald Scaife was under probation for ineligibly possessing a firearm when he refused to cooperate with drug-addiction treatment, failed numerous drug tests, and drove under the influence of methamphetamine and PCP. He appeals from the district court's

order revoking his probation. Because the district court acted within its discretion when it concluded that Scaife's need for confinement outweighs the benefits of probation, we affirm.

FACTS

The district court convicted Donald Scaife of ineligibly possessing a firearm in July 2018 and stayed his 60-month sentence conditioned on probationary terms. The conditions included, among other things, remaining law-abiding, abstaining from nonprescribed, mood-altering drugs, and complying with drug testing and drug-addiction treatment.

Over the next two years, Scaife failed to remain chemical free, violating the conditions of his probation in various ways and on many occasions. For example, in March 2019, he failed to complete his Park Avenue drug-addiction treatment, tested positive 11 times for methamphetamine and PCP, was arrested for fifth-degree drug possession, and was charged with gross-misdemeanor third-degree impaired driving. During his incarceration for that conduct, he completed two treatment programs by doing only "what was minimally possible." Then four months after being released from jail in February 2020, Scaife again faced an impaired-driving charge when he refused to submit to a chemical test. The district court released him from jail again in June 2020 on the condition that he submit to weekly drug tests. Scaife tested positive for methamphetamine and PCP six times between July and August 2020 and missed two tests during that period. He was referred for inpatient chemical-dependency treatment to begin August 10, 2020, but on August 9 police

arrested him for obstruction when he walked away from police investigating an auto theft, and they found on his person a glass methamphetamine pipe.

The district court held a probation-revocation hearing in September 2020. Police officers testified about his criminal conduct, including the incidents just described and a hit-and-run collision allegedly involving Scaife while he was intoxicated. His probation officer testified that she found him extremely resistant to treatment and not amenable to continued probation. The district court revoked Scaife's probation and executed his prison sentence, finding that his probation-violating conduct was intentional and inexcusable, that he would most effectively receive treatment while incarcerated, and that the need for his confinement outweighed the policies favoring probation.

DECISION

Scaife argues that the district court improperly revoked his probation. Probation revocation is proper if the district court identifies clear and convincing evidence establishing a probation-condition violation, Minn. R. Crim. P. 27.04, subd. 2(1)(c), finds that Scaife intentionally or inexcusably violated it, and finds that the “need for confinement outweighs the policies favoring probation.” *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). We review the district court's probation-revocation decision for an abuse of discretion. *Austin*, 295 N.W.2d at 249–50. For the following reasons, we conclude that the district court did not abuse its discretion by revoking Scaife's probation.

The record of Scaife's abundant, continuous drug- or alcohol-fueled criminal behavior while on probation readily supports the district court's finding that he intentionally or inexcusably violated his probation conditions and that he needed

confinement to receive successful chemical-addiction treatment. When a probationary defendant or parolee “has been offered treatment but has failed to take advantage of the opportunity or to show a commitment to rehabilitation,” the district court reasonably concludes that treatment failed. *Id.* at 251. We are unmoved by Scaife’s contention that his being foreclosed from attending the scheduled treatment in August 2020 undermines the district court’s finding that his treatment failed. That circumstance argues instead for his incarceration. The reason Scaife could not attend this treatment is that he engaged in criminal conduct, causing his arrest, the day before he was set to begin the program. That he continued to use drugs and engage in drug-related criminal conduct even after he completed two treatment programs provided ample evidence for the district court to conclude that his alleged success in the programs was not sustained. Within the supreme court’s statement that probation revocation is “a last resort when treatment has failed,” *id.* at 250, the district court acted well within its discretion by revoking probation under these circumstances.

Affirmed.