*This opinion is nonprecedential except as provided by*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**
**A22-0071**

State of Minnesota,
Respondent,

vs.

Ley Enrique Ortiz Calleja,
Appellant.

**Filed July 18, 2022**
**Affirmed**
**Larkin, Judge**

Steele County District Court
File No. 74-CR-19-1861

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

Daniel A. McIntosh, Steele County Attorney, Julia A. Forbes, Assistant County Attorney, Owatonna, Minnesota (for respondent)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Connolly, Judge; and Larkin, Judge.

**NONPRECEDENTIAL OPINION**

**LARKIN**, Judge

Appellant challenges the revocation of his probation. We affirm.

## FACTS

Appellant Ley Enrique Ortiz Calleja was convicted of third-degree criminal sexual conduct based on his sexual abuse of a young child. The district court granted Calleja's request for a downward sentencing departure, stayed execution of his sentence, and placed him on probation for ten years.

In setting forth the conditions of Calleja's probation at sentencing, the district court told Calleja that he must refrain from the use of alcohol, complete a sex-offender program, complete a chemical-dependency evaluation, and notify probation of any change of address. The state asked the district court to prohibit Calleja from having unsupervised contact with minors. In response, the district court stated:

> [Y]ou will have no unsupervised contact with minors unless or until approved by your treatment team and your probation officer. The exception I'm carving out is for your daughter, and *I am going to allow continued contact unless your treatment provider determines, as they work through the additional evaluations, that there is a risk to that child.* What I'm weighing here is the potential damage to a child of being cut off from a parent for reasons that they can't understand due to age and what seems like a relative low risk of you sexually offending against that child at this point in time.
>
> *And so if something comes up as you are working through treatment that causes the treatment providers to believe that there is a risk that I was not aware of at this time, then they can direct that you have no contact* until you've made sufficient progress in your treatment program so I'll just require that you cooperate with that.

(Emphasis added.) The district court asked Calleja if he understood the no-contact condition, and he said, "Yes." The prosecutor then stated that the treatment program would likely require "a family victim polygraph" for Calleja to "have contact."

The district court issued a sentencing order containing the aforementioned probation conditions and specifically stating, "Have no unsupervised contact with males and females under the age of 18. Exception is with daughter." The order also directed Calleja to follow all recommendations of his sex-offender treatment providers.

Several months after sentencing, the probation department filed a report alleging that Calleja violated the terms of his probation by (1) using alcohol multiple times; (2) failing to complete a sex-offender program; (3) failing to complete a chemical-dependency evaluation; (4) residing with his wife and child instead of at his designated residence; and (5) having contact with minors, including "his daughter, 8th grade sister-in-law, and family minors at outings."

Calleja admitted all of the alleged violations and specifically admitted that he had contact with minors, including his daughter, a sister-in-law, and other minors within his family. The district court accepted Calleja's admissions and set the matter for a probation disposition hearing.

At the disposition hearing, the district court heard testimony from Calleja's probation agent. He explained that there were safety concerns regarding the prospect of contact between Calleja and his daughter. To address that issue, the probation agent met with various "stakeholders," including Calleja's sex-offender program, and determined that Calleja must complete a "family victim polygraph" before having contact with his daughter. Calleja completed the polygraph, and it indicated that there were "other family victims." Calleja's probation agent and sex-offender program determined that Calleja "could not be around his daughter." According to the probation agent, despite that

restriction on contact with his daughter, Calleja resided with his wife and child, spent time alone with the child, and changed the child's diapers. Calleja also spent time alone with his sister-in-law, who was in eighth grade.

The district court revoked Calleja's probation and executed his sentence. Calleja appeals.

**DECISION**

Calleja contends that the district court erred by relying on his contact with his daughter as a basis for probation revocation because the district court never imposed a condition restricting such contact. He argues that the district court violated his right to due process because he never received "fair notice" of the condition.

Before a district court revokes a defendant's probation, it 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." *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). "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." *Id.* at 249-50. A district court "abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quotation omitted).

"[A] probationer is entitled to procedural due process prior to the revocation of probation." *State v. Beaulieu*, 859 N.W.2d 275, 280 (Minn. 2015). This includes fair notice of any noncriminal acts, the violation of which would subject the probationer to

incarceration. *Austin*, 295 N.W.2d at 251. Additionally, "the condition alleged to have been violated must be a condition of probation that has in fact been imposed by the district court." *State v. Ornelas*, 675 N.W.2d 74, 75 (Minn. 2004). "Whether a defendant has been denied due process of law is a question of law that we review de novo." *Beaulieu*, 859 N.W.2d at 280.

In *Ornelas*, a district court revoked a defendant's probation for having unsupervised contact with a minor. 675 N.W.2d at 78. The supreme court reversed the revocation because there was "nothing in the record indicating that the no-contact provision was ever made a condition" of the defendant's probation. *Id.* at 81. There was no such condition "contained in any district court order or other writing" or "stated as a condition of probation" at the time of sentencing. *Id.* at 80-81.

Calleja compares this case to *Ornelas* and argues that having contact with his daughter was not prohibited under the terms of his probation. But this case is readily distinguishable from *Ornelas* because the record here indicates that the no-contact provision was stated as a condition of probation at sentencing. The district court clearly stated on the record that Calleja's treatment provider could prohibit contact between Calleja and his daughter if it determined that there was a risk to the child. Moreover, Calleja told the district court that he understood that condition.

Calleja cites *State v. Henderson* and argues that the district court improperly delegated the imposition of the no-contact condition to the treatment provider. 527 N.W.2d 827 (Minn. 1995). In *Henderson*, the defendant asserted that a corrections department lacked authority to place him in a special probation program with "several restrictive

features," which had not been ordered by the district court at sentencing. *Id.* at 828. The supreme court agreed with the defendant because the special probation program was "an intermediate sanction within the purview of the district court." *Id.* at 829. "Intermediate sanctions" are conditions that may be imposed by a district court in connection with a stayed sentence, such as jail, home detention, electronic monitoring, intensive probation, and chemical-dependency or mental-health treatment. *See id.* at 828-29 (discussing Minn. Stat. § 609.135 (1994)). Because a corrections department does not have the authority to impose intermediate sanctions, the supreme court reversed the revocation of the defendant's probation. *Id.* at 829-30.

Again, this case is distinguishable. Here, the district court did not delegate authority to impose an intermediate sanction. The district court restricted Calleja's unsupervised contact with minors, made an exception for his daughter, and authorized his treatment provider to prohibit contact between Calleja and his daughter if risks were identified. That is, the district court announced a no-contact condition at sentencing and permitted some flexibility in the administration of one aspect of that condition relating to Calleja's daughter. That approach was consistent with the following statement in *Henderson*, "We recognize that some flexibility in the administrative implementation of probation conditions is desirable and that trial judges should not be burdened with administrative issues relating to the implementation of conditions of probation." *Id.* at 829.

This case is more akin to *State v. Bradley*, 756 N.W.2d 129 (Minn. App. 2008). In *Bradley*, a district court required a defendant to complete a chemical-dependency evaluation and follow any recommendations as a condition of probation. 756 N.W.2d at

131. She underwent two evaluations, which recommended inpatient treatment. *Id.* The district court found that she violated the terms of her probation by failing to complete inpatient treatment. *Id.* at 132. On appeal, the defendant argued that the district court "improperly delegated to an assessor the authority to impose the intermediate sanction of chemical-dependency treatment." *Id.* at 133. This court held that the district court did not improperly delegate sentencing authority. *Id.* at 130. We acknowledged that chemical-dependency treatment is an intermediate sanction but reasoned that "[t]he district court simply delegated to the chemical-health assessor the expert determination as to whether [the defendant] needs treatment and, if so, the type or level of appropriate treatment." *Id.* at 133. We concluded that "allowing a chemical-health assessor to determine a probationer's need for treatment and the type or level of treatment needed, if any, delegates only administrative implementation of a condition imposed by the court." *Id.*

The district court's delegation of authority to the sex-offender treatment professionals in this case was similar to the delegation in *Bradley*. The district court ordered Calleja to complete a sex-offender program and deferred to the expertise of the treatment provider regarding whether Calleja could safely have unsupervised contact with his daughter while in treatment. The district court's approach was a permissible delegation of administrative implementation of the no-contact condition. *See id*.

Calleja also argues that no condition of probation dictated where he could reside and that he therefore did not violate a term of probation by residing with his wife and child. We agree that there was no condition restricting where Calleja could reside. However, the district court permitted Calleja's treatment provider to restrict contact between Calleja and

his daughter, and the provider did so. By residing with his daughter despite that restriction, Calleja violated the no-contact condition of his probation.

In conclusion, the district court did not err by relying on Calleja's contact with his daughter as a basis for probation revocation. Because Calleja has not shown that the district court abused its discretion in revoking his probation, we affirm.

**Affirmed.**