This opinion is nonprecedential except as provided by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
A22-0308

State of Minnesota,
Respondent,

vs.

Abel Villanueva,
Appellant.

Filed September 6, 2022
Affirmed
Johnson, Judge

Kandiyohi County District Court
File No. 34-CR-21-794

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

Shane D. Baker, Kandiyohi County Attorney, Julianna F. Passe, Assistant County Attorney, Willmar, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Tracy M. Smith, Presiding Judge; Johnson, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

The district court revoked Abel Villanueva's probation because he did not report to jail on the first day of his four-year term of probation, as ordered by the district court at his

sentencing hearing. Villanueva argues that the district court erred by concluding that the need for his confinement outweighs the policies favoring probation. We affirm.

FACTS

In August 2021, law-enforcement officers responded to a report of a squatter in an apartment in the city of Willmar. The officers found Villanueva, who appeared to be intoxicated. In a search of the apartment, the officers found methamphetamine, synthetic cannabinoids, and drug paraphernalia.

The state charged Villanueva with fifth-degree possession of a controlled substance, in violation of Minn. Stat. § 152.025, subd. 2(1) (2020); possession of synthetic cannabinoids, in violation of Minn. Stat. § 152.027, subd. 6(d) (2020); and possession of drug paraphernalia, in violation of Minn. Stat. § 152.092(a) (2020).

After his arrest, Villanueva was released on bond. The terms of his pre-trial release prohibited him from possessing alcohol or controlled substances and required him to submit to random drug testing. In late September 2021, a probation officer reported that Villanueva had not complied with the drug-testing requirement, had not been in contact with the probation office for more than a month, and had been arrested again for fifth-degree possession of a controlled substance. Villanueva was detained following his arrest.

In October 2021, Villanueva submitted to a chemical-use assessment, which resulted in a diagnosis of severe cannabis-use disorder. The assessor recommended that Villanueva abstain from the use of alcohol and mood-altering substances and participate in a residential treatment program.

On November 10, 2021, Villanueva pleaded guilty to the fifth-degree possession charge in exchange for the dismissal of the other charges. The district court ordered that he be detained pending sentencing except that he could be released directly to a residential treatment program if and when such arrangements could be made. Villanueva was released to a residential treatment facility on November 17, 2021. Twelve days later, he absconded from the treatment facility without completing the treatment program and without contacting his probation officer or the district court.

The district court held a sentencing hearing on December 7, 2021. Villanueva appeared remotely by video, apparently without prior permission of the district court. When given an opportunity to speak in allocution, Villanueva stated that he left the treatment facility because he "had a cold" and because the facility had not responded to his complaints, but he also stated that he wanted to return to treatment. The district court imposed a presumptive sentence of 19 months of imprisonment with a stay of execution, four years of probation with a requirement that he complete a treatment program, and 120 days in jail with 54 days of credit. The district court ordered Villanueva to report to the Kandiyohi County jail by 7:00 p.m. that evening. Near the conclusion of the sentencing hearing, Villanueva asked the district court whether he could report to jail the following day instead of that evening. The district court denied his request and stated: "It's really crucial that you're appearing for that. We don't want a probation violation right away. With your history of probation violations, that would not look very favorable upon you." Villanueva acknowledged the district court's statement by saying, "I understand."

Villanueva did not report to the Kandiyohi County jail by 7:00 p.m. that evening, and he did not contact the jail or his probation officer. A warrant for his arrest was issued. He was arrested approximately one week later.

The district court conducted a probation-revocation hearing on December 29, 2021. Villanueva testified that he did not report to jail because he preferred a treatment program over jail. He also testified that, if he were reinstated on probation, he would comply with the terms of his probation and the requirement that he complete a treatment program. At the conclusion of the hearing, the district court found that Villanueva had violated the terms of his probation, that his violation was intentional and inexcusable, and that the need for confinement outweighs the policies favoring probation. The district court executed Villanueva's 19-month prison sentence. Villanueva appeals.

DECISION

Villanueva argues that the district court erred by revoking his probation and executing his sentence.

If a district court finds that a criminal offender has violated a term of probation, the court may either continue the offender on probation or revoke probation and execute the sentence. Minn. R. Crim. P. 27.04, subd. 3(2)(b)(iv)-(v). The supreme court has prescribed a three-step analysis to guide district courts in deciding whether to revoke probation. A district court may revoke probation only if the court (1) designates the specific condition that has been violated; (2) finds that the violation was intentional or inexcusable; and (3) finds that the need for confinement outweighs the policies favoring probation. *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). In making these findings, "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). "A 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 605 (quoting *Austin*, 295 N.W.2d at 249-50).

In this case, the district court made an express finding with respect to each of the three *Austin* factors. Villanueva challenges the district court's findings only with respect to the third *Austin* factor—that the need for his confinement outweighs the policies favoring probation.

A district court may find that the third *Austin* factor is satisfied if it finds that any of three sub-factors are present: (1) that confinement is needed to "'protect the public from further criminal activity by the offender,'" (2) that confinement is necessary to provide treatment, or (3) that a further stay of the sentence "'would unduly depreciate the seriousness of the violation.'" *Austin*, 295 N.W.2d at 251 (quoting A.B.A. Standards for Criminal Justice, Probation § 5.1(a) (Approved Draft 1970)). In this case, the district court made an express finding with respect to each of the three sub-factors.

Villanueva contends that the record does not support the district court's revocation decision on the grounds that his probation violation on December 7, 2021, was his first probation violation and that he remained willing to participate in a treatment program. Villanueva's contentions relate most directly to the district court's finding on the second sub-factor that "the best place for Mr. Villanueva to receive the necessary correctional

treatment—the best that can be offered is to be confined in the Minnesota Correctional Facility system."

The record as a whole supports the district court's finding with respect to the second sub-factor. Villanueva had completed treatment programs on two prior occasions but nonetheless had relapsed. While on pre-trial release in this case, Villanueva failed to submit to random drug tests, as required by the conditions of his release. After he was released to a treatment facility while awaiting sentencing, he absconded. And upon being sentenced to a jail term, he did not report to jail. These facts support the district court's decision to execute Villanueva's sentence to ensure that he receives chemical-dependency treatment in prison.

Villanueva also contends that the district court should have reinstated his probation due to his "demonstrated willingness to participate in treatment." Villanueva testified that he was willing to engage in a treatment program, but he did not demonstrate such a willingness by his actions. To the contrary, he absconded from a treatment facility while awaiting sentencing. Villanueva further contends that, instead of revoking probation, the district court could have imposed intermediate sanctions, such as jail or an updated chemical-dependency assessment. The district court already had ordered Villanueva to report to jail, but he did not do so.

In sum, Villanueva has not identified any reason why the district court erred with respect to the second sub-factor by finding that confinement is necessary to provide treatment. In addition, Villanueva has not challenged the district court's finding with respect to the third sub-factor. The district court found that "if I gave Mr. Villanueva

another chance, if I listen to him again, his promises that he is going to do better, that would unduly depreciate the seriousness of his violation, and absolutely his sentence must be imposed at this time and executed." This is an independent and sufficient basis for the district court's finding on the third *Austin* factor.

Thus, the district court did not err by revoking Villanueva's probation and executing his sentence.

Before concluding, we note that Villanueva has filed a one-page *pro se* supplemental brief. He informs the court that he is making progress in his prison-based treatment program, has been recognized for certain accomplishments, and is determined to succeed. His *pro se* supplemental brief does not assert that the district court erred in any particular way and, thus, does not state a basis for appellate relief. We nonetheless appreciate the positive report.

Affirmed.