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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1208**

State of Minnesota,
Respondent,

vs.

Joseph Duane Eagle,
Appellant.

**Filed March 29, 2011
Affirmed
Wright, Judge**

Crow Wing County District Court
File No. 18-K9-04-003010

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Donald F. Ryan, Crow Wing County Attorney, Bruce F. Alderman, Assistant County Attorney, Brainerd, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Cathryn Middlebrook, Assistant State Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Wright, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

Appellant challenges the district court's decision to revoke his probation and execute his sentence of 36 months' imprisonment for first-degree refusal to submit to

chemical testing. He argues that the district court abused its discretion by doing so. We affirm.

FACTS

On November 9, 2004, Crow Wing County Sgt. Chad Paulson found appellant Joseph Duane Eagle unconscious in a parked car in Garrison. Eagle was transported to the Crow Wing County Jail and read the Implied Consent Advisory. When Eagle refused to submit to a breath test, he was charged with one count of first-degree driving while impaired, a violation of Minn. Stat. §§ 169A.20, subd. 1(1), 169A.24, subd. 1(1) (2004), and one count of first-degree refusal to submit to chemical testing, a violation of Minn. Stat. §§ 169A.20, subd. 2, 169A.24, subd. 1(1) (2004). Eagle pleaded guilty to one count of first-degree refusal to submit to chemical testing on February 28, 2005. The district court sentenced Eagle to 36 months' imprisonment, stayed the execution of the sentence, and ordered seven years' supervised probation, subject to certain conditions.

At a November 3, 2006 probation-violation hearing, Eagle admitted that he violated the terms of his probation by, among other things, failing to abstain from the use of intoxicants. The district court reinstated probation on the same terms and conditions. At an August 1, 2008 probation-violation hearing, Eagle admitted that he violated the terms of his probation again by using and possessing alcohol and failing to cooperate and be truthful with probation agents. The district court reinstated probation on similar terms and conditions.

On January 28, 2010, Eagle's supervising agent, Gary Lawson, submitted a probation-violation report, alleging that Eagle admitted to snorting crushed Vicodin pills

and smoking marijuana. Lawson advised Eagle of an active arrest warrant in Crow Wing County and directed Eagle to turn himself in immediately. Eagle did not do so. On March 29, 2010, police arrested Eagle in Mille Lacs County for driving after cancellation as inimical to public safety, after which he tested positive for opiates.

Eagle appeared in district court for a third probation-violation hearing and admitted taking Vicodin without a prescription, smoking marijuana, and testing positive for opiates. The district court found that these were “intentional and inexcusable” violations of the terms of probation. The district court found that other treatment methods had failed and that confinement is necessary. The district court revoked the stay and executed Eagle’s sentence. This appeal followed.

DECISION

Eagle argues that the district court abused its discretion by revoking his probation because the evidence does not establish that the violation was intentional or inexcusable, nor does it establish that the need for confinement outweighs the policies favoring probation.

When a probationer is alleged to have violated a condition of probation, the state must prove the violation by clear and convincing evidence. Minn. R. Crim. P. 27.04, subd. 3(2)-(3); *State v. Johnson*, 679 N.W.2d 169, 177 (Minn. App. 2004). If this standard is met, the district court may revoke probation and execute a previously stayed sentence. Minn. Stat. § 609.14, subd. 3(2) (2008). The decision to do so rests within the district court’s broad discretion and will not be disturbed absent a clear abuse of that discretion. *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). When revoking a

defendant's probation, the district court must (1) designate a specific condition that was violated, (2) find that the violation was intentional or inexcusable, and (3) find that the need for confinement outweighs the policies favoring probation. *Id.* at 250 (the *Austin* factors).

As to the first *Austin* factor, the district court found, and Eagle does not dispute, that Eagle violated the conditions of his probation by possessing and using drugs and alcohol. Thus, the first *Austin* factor is satisfied.

Regarding the second *Austin* factor, the district court found that Eagle's violations were "intentional and inexcusable." This finding has ample evidentiary support in the record. Eagle testified that he smoked marijuana and took Vicodin without a prescription in both January and March 2010. Lawson testified that Eagle admitted to him that he smokes marijuana regularly and buys three Vicodin daily, crushes them up, and snorts them. Moreover, Lawson directed Eagle to turn himself in on the active arrest warrant, which Eagle did not do. And Eagle tested positive for three different types of opiates when he was apprehended for driving after cancellation as inimical to public safety. Thus, there is ample evidentiary support for the district court's finding that the requirements for the second *Austin* factor are met.

The third *Austin* factor requires the district court to weigh the need for confinement against the policies favoring probation. *Id.* To ensure that the balance is properly struck between the probationer's interest in freedom and the state's interest in ensuring rehabilitation and public safety, a district court should not revoke probation unless it finds that

- (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 [the offender] is confined; or
- (iii) it would unduly depreciate the seriousness of the violation if probation were not revoked.

State v. Modtland, 695 N.W.2d 602, 607 (Minn. 2005) (quotation omitted). “The purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed.” *Austin*, 295 N.W.2d at 250.

Here, the district court found that Eagle has served time in jail, participated in a number of treatment programs, and received support from his family. But, the district court found, Eagle needs a treatment program in confinement to stay sober. This finding clearly indicates that Eagle is in need of correctional treatment that can be most effectively provided while incarcerated. *Modtland*, 695 N.W.2d at 607. The record amply supports this finding. Eagle violated the terms of his probation on two occasions before the 2010 incidents, he has been in at least six chemical-dependency treatment facilities, and he continues to relapse and defy the directions of his supervising agent. Lawson testified that Eagle is not amenable to supervised probation and that a seventh chemical-dependency treatment program would not be appropriate. The district court also considered Eagle’s unauthorized possession and use of narcotics, apparently while Eagle was in a motor vehicle. Accordingly, it was well within the district court’s discretion to find that chemical-dependency treatment has not been effective for Eagle and that the need for confinement outweighs the policies favoring probation. *See Austin*, 295 N.W.2d at 249-50 (stating that district court enjoys broad discretion when determining whether

there is sufficient evidence to revoke probation). On this record, the third *Austin* factor also is met.

The decision to revoke Eagle's probation was a sound and appropriate exercise of the district court's discretion.

Affirmed.