STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1599

State of Minnesota,
Respondent,

vs.

Eric Wayne Brown,
Appellant.

Filed June 10, 2013
Affirmed
Kalitowski, Judge

Anoka County District Court
File No. 02-CR-10-6442

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

Anthony C. Palumbo, Anoka County Attorney, Marcy S. Crain, Assistant County Attorney, Anoka, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Presiding Judge; Kalitowski, Judge; and Hooten, Judge.

U N P U B L I S H E D O P I N I O N

KALITOWSKI, Judge

On appeal from the order revoking his probation, appellant Eric Brown argues that the district court erred by admitting unreliable hearsay evidence at the probation-revocation hearing and abused its discretion in revoking his probation. We affirm.

D E C I S I O N

I.

"When this court reviews district court evidentiary rulings, the district court is granted significant discretion and the question is limited to whether the district court clearly and unequivocally erred in its evidentiary judgment." *State v. Johnson*, 679 N.W.2d 169, 175 (Minn. App. 2004).

Pursuant to a plea agreement, Brown pleaded guilty to first-degree controlled-substance crime, and the district court stayed execution of Brown's sentence. Conditions of Brown's probation included that he not use mood-altering chemicals. On January 31, 2012, less than three weeks after sentencing, Brown was arrested for possession of methamphetamine. Brown consented to being interviewed by two police officers, and in the recorded interview, Brown admitted to using methamphetamine earlier that day.

The state petitioned the district court to revoke Brown's probation, alleging that Brown violated his probation by failing to keep in contact with his probation officer and by using methamphetamine. At the probation-revocation hearing, Brown's probation officer, David Breyen, testified about his discovery of Brown's arrest and the fact that Brown had admitted to using methamphetamine in a recorded interview with the police.

Breyen read parts of a transcript of the interview into the record. The state offered the transcript into evidence. The district court denied Brown's objection to admission of the evidence, concluding that the transcript was reliable hearsay.

Brown argues that the district court erred by admitting the transcript because it was not reliable hearsay and not properly authenticated, as required by Minn. R. Evid. 901(a). We disagree.

The Minnesota Rules of Evidence, other than those regarding privilege, do not apply to a probation-revocation proceeding. Minn. R. Evid. 1101(b)(3). Thus, hearsay statements, if reliable, are admissible in a probation-revocation hearing. *See Belk v. Purkett*, 15 F.3d 803, 808 (8th Cir. 1994) ("In deciding whether to consider hearsay statements of a witness not presented for cross-examination, the hearing officer should consider whether the hearsay evidence sought to be admitted bears substantial indicia of reliability."). In *Johnson*, this court held that

> when the defendant has had ample opportunity to present evidence in a probation revocation proceeding, the rules of evidence do not preclude admission of hearsay evidence . . . . Affording the defendant the opportunity to present evidence ensures that the defendant can expose potential flaws in the evidence. The reliability of the hearsay evidence will be weighed against other evidence and the risk of relying on untrustworthy hearsay evidence will be greatly minimized.

679 N.W.2d at 174.

Here, Breyen testified that after Brown's arrest, he learned that in a recorded police interview Brown had admitted to using methamphetamine. The state presented Breyen with a document "STATE OF MINNESOTA v. ERIC WAYNE BROWN" and

identifying case file numbers. Breyen identified the document as the transcript of the police interview of Brown that took place on January 31, 2012, and identified the names of the two interviewing police officers on the transcript. Breyen read parts of the transcript into the record. Brown was afforded the opportunity to present evidence challenging the reliability of the transcript, but only objected based on the lack of authentication. Brown failed to introduce any evidence concerning the police interview in support of his claim that the transcript was not reliable evidence. We therefore defer to the district court's finding of reliability and conclude that the district court did not err by admitting the transcript.

II.

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." *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). The state has the burden of proving the probation violation by clear and convincing evidence. Minn. R. Crim. P. 27.04, subd. 3. Before a district court revokes probation, it must satisfy the factors identified in *Austin* by (1) designating the specific condition of probation that was violated; (2) finding that the violation was intentional or inexcusable; and (3) finding that the need for confinement outweighs the policies favoring probation. *State v. Modtland*, 695 N.W.2d 602, 606 (Minn. 2005).

The district court found that Brown violated his probation by using methamphetamine and that the violation was willful, intentional, and inexcusable. The court found that Brown is not amenable to being treated in a probationary setting and that

continuing Brown on probation would depreciate the seriousness of the violation. Thus, the court revoked Brown's probation.

Brown asserts that the state did not prove by clear and convincing evidence that he used methamphetamine because the transcript of the interview was inadmissible. But we have determined that the district court did not err by admitting the transcript. Brown also asserts that the transcript was not clear and convincing evidence of his use because he "contradicted that evidence by stating that he did not use intoxicants and by stating that the transcript was not accurate." But Brown did not testify at the probation-revocation hearing; he made these statements to the district court when offered an opportunity to address the court on the disposition after the court found a violation. And Brown points to no evidence in the record to support his contention that the transcript was inaccurate. We conclude that the district court did not abuse its discretion in revoking Brown's probation.

Affirmed.