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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0308**

State of Minnesota,
Respondent,

vs.

Jordan Lee Norgaard,
Appellant.

**Filed October 15, 2013
Affirmed
Kalitowski, Judge**

Lyon County District Court
File No. 42-CR-07-1323

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

Richard R. Maes, Lyon County Attorney, Tricia B. Zimmer, Assistant County Attorney, Marshall, Minnesota (for respondent)

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

Considered and decided by Chutich, Presiding Judge; Kalitowski, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Jordan Lee Norgaard contends that the district court abused its discretion when it revoked his probation. He argues that the district court erred by

finding that his violation was intentional or inexcusable and that the need for confinement outweighed the policies favoring probation. We affirm.

D E C I S I O N

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). Prior to revoking probation, the district court must “1) designate the specific condition or conditions that were violated; 2) find that the violation was intentional or inexcusable; and 3) find that need for confinement outweighs the policies favoring probation.” *Id.* at 250. In making the three *Austin* findings, “[district] 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).

Intentional or inexcusable violation

Appellant admitted to violating the terms of his probation that prohibited him from using or possessing alcohol when he drank beer at his apartment on the night of his birthday and the following day. Appellant challenges the district court’s finding that his violation was intentional or inexcusable, arguing that his decision to consume alcohol was impulsive, he needed aftercare substance-abuse treatment, and he did not commit any new criminal offenses when he violated. But appellant testified that he knew the terms of his probation included not possessing or using alcohol. That appellant acted impulsively and relapsed after a period of sobriety does not make his conduct unintentional or excusable. And appellant was not merely required to abstain from using alcohol and

committing a criminal offense, but was required to abstain from drinking or possessing alcohol entirely. Therefore, we conclude that the district court's finding that appellant's violation was intentional or inexcusable is supported by sufficient evidence in the record.

Need for confinement

“In some cases, policy considerations may require that probation not be revoked even though the facts may allow it” *Austin*, 295 N.W.2d at 250. “The purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed.” *Id.* The district court must not react reflexively to an accumulation of technical violations but rather “must take care that the decision to revoke is based on sound judgment.” *Id.* at 251.

The district court must balance “the probationer’s interest in freedom and the state’s interest in insuring his rehabilitation and the public safety.” *Id.* at 250. When weighing these competing interests, district courts should consider whether

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

Id. at 251 (quotation omitted); *see also Modtland*, 695 N.W.2d at 607 (stating that subfactors are relevant to the balancing test).

The district court found that

[appellant] has had three prior probation violations since being sentenced [in] February, 2008 [He] had a first probation violation . . . as a result of a Failure to Abstain; a second probation violation . . . again, as a result of a Failure to Abstain; a third probation violation . . . as a result of

Failures to Abstain . . . and a Failure to Abide by the Chemical Use Assessment. At that point, [appellant] was placed on probation with participation in Drug Court. The court file reflects successful completion of the Drug Court Program a few weeks ago. . . . [T]here is no more intensive training, education, or treatment that can be offered other than participation in Drug Court. With a violation involving additional use, . . . to not revoke probation at this time would unduly depreciate the seriousness of the violation because there is nothing more that could be offered. . . . [A]s such, I would conclude that the need for confinement at this point outweighs the policies favoring probation.

Appellant argues the evidence did not support that the need for confinement outweighed the policies favoring probation because he made a mistake and was not a risk to public safety, had been sober for two years, had completed the drug court program, was attending college, and had “made significant progress in his behavior and maturity” since the time of his offenses. We disagree, and we conclude that the district court’s findings are supported by sufficient evidence in the record.

Appellant repeatedly violated the terms of his probation by consuming alcohol. Although his conduct seemed to improve once he enrolled in drug court, his final violations occurred just weeks after he completed the drug court program. The district court reasoned that drug court was the most intensive treatment program available and, because appellant had completed that program, there was not a more intensive rehabilitation option available outside of confinement. Appellant suggests alternative options, but sanctions and programs such as jail, community work service, and drug court had not been effective for appellant in the past. Appellant had violated probation multiple times and been afforded several opportunities to conform his conduct to the

conditions of probation. But even after completing the intensive drug court program, appellant failed to rehabilitate himself and abide by the terms of his probation. Therefore, the district court's conclusion that to not revoke probation would unduly depreciate the seriousness of the violation is supported by sufficient evidence in the record, as is the district court's conclusion that the need for confinement outweighed the policies favoring probation.

We conclude that because the evidence supports the district court's findings that appellant's probation violation was intentional or inexcusable and the need for confinement outweighed the policies favoring probation, the district court did not abuse its discretion when it revoked appellant's probation.

Affirmed.