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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0396**

State of Minnesota,
Respondent,

vs.

Anthony Barrett Graham,
Appellant.

**Filed October 21, 2013
Affirmed
Peterson, Judge**

Mower County District Court
File Nos.
50-CR-11-2844
50-CR-11-1869
50-CR-11-2443
50-CR-11-1781

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

Kristen Nelsen, Mower County Attorney, Jeremy Lee Clinefelter, Assistant County Attorney, Austin, Minnesota (for respondent)

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

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

UNPUBLISHED OPINION

PETERSON, Judge

Appellant argues that because the evidence did not establish that the violations of his conditions of probation were intentional or inexcusable or that the need for confinement outweighed the policies favoring probation, the district court abused its discretion by revoking his probation. We affirm.

FACTS

On October 4, 2011, appellant Anthony Barrett Graham pleaded guilty to fifth-degree drug possession, violation of a no-contact order, and theft of a firearm. These offenses occurred on separate dates in June and July 2011. On December 2, 2011, the district court sentenced appellant to 15 months, 21 months, and 18 months, respectively, for those convictions, but the court stayed execution of the sentences for five years on the first two convictions and for 20 years on the third. Appellant was ordered to refrain from using drugs or alcohol, complete a chemical-dependency evaluation and follow all recommendations, remain law-abiding, perform 100 hours of community service, and follow all of the conditions and recommendations set forth in his probation contract.

Before the district court imposed these sentences, appellant was arrested on a new charge, first-degree conspiracy to manufacture methamphetamine, on November 4, 2011. On January 9, 2012, appellant pleaded guilty to the lesser offense of possession of methamphetamine precursors with intent to manufacture. The district court sentenced appellant to 45 months for this offense but stayed execution of the sentence, which was a downward dispositional departure. Probation conditions included that appellant

successfully complete inpatient treatment and aftercare as recommended by his rule-25 evaluation.

On November 16, 2012, appellant's probation agent filed a notice of violation, alleging that appellant (1) tested positive for cocaine; (2) did not remain law-abiding because he was charged with driving after license revocation, no insurance, and gross-misdemeanor domestic assault; (3) failed to notify the agent of the driving-after-revocation and no-insurance charges; (4) failed to start aftercare outpatient treatment; (5) failed to complete a domestic-violence class; (6) failed to complete a cognitive-skills class; (7) failed to make restitution payments; and (8) failed to complete any hours of community service. The agent filed an addendum on November 27, 2012, stating that appellant was avoiding arrest on the court-issued warrant.

The district court found that appellant's probation violations were intentional and/or inexcusable and revoked appellant's probation. This appeal followed.

D E C I S I O N

We review the district court's decision to revoke probation for an abuse of discretion. *State v. Rottelo*, 798 N.W.2d 92, 94 (Minn. App. 2011), *review denied* (Minn. Jul. 19, 2011). Before revoking an offender's probation, the district court must consider whether (1) a specific probationary condition has been violated; (2) the violation was intentional or inexcusable; and (3) the need for confinement outweighs policies favoring probation. *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). The district court found that appellant violated specific conditions of probation by using mood-altering chemicals, failing to enter and complete aftercare outpatient treatment, receiving a

citation for driving after revocation and no insurance, and failing to complete community-service hours. The district court found that appellant “demonstrates a serious disregard for societal rules that is not wholly related to his [chemical dependency] issues” and that appellant’s “violations of probation are intentional and/or inexcusable.”

Appellant argues that “there is not sufficient evidence in the record to establish that [he] intended by his actions to violate his probation.” But the record contains evidence that shows that appellant was informed about the conditions of probation at sentencing and that appellant committed all of the acts that the district court found were probation violations. Appellant offered explanations for his conduct, but the explanations did not demonstrate that appellant’s conduct was not intentional. Appellant appears to argue that for a violation to be intentional, a probationer must act with the intent to violate probation. But appellant cites no authority that establishes that a specific intent to violate probation must be shown. Appellant also appears to argue that because he is an addict, his cocaine use was a relapse, rather than an intentional probation violation. But, although we recognize that it is extremely difficult for an addict to resist using drugs, appellant cites no authority that required the district court to conclude that because appellant suffers from an addiction, his use of cocaine was not an intentional act. Furthermore, two of the offenses for which appellant was on probation involved possession of controlled substances. The purpose of probation is rehabilitation, and appellant’s continued involvement with controlled substances demonstrates that probation has failed to accomplish this purpose.

Appellant also argues that there is insufficient evidence “to support a finding that the need for confinement outweighed the policies favoring probation.” With respect to the third *Austin* factor, a district court must consider whether “confinement is necessary to protect the public from further criminal activity by the offender,” “correctional treatment . . . can most effectively be provided if [the offender] is confined,” or “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). Although appellant argues that he was guilty of no more than “technical violations” occasioned by his addiction to drugs, the district court found that in the preceding ten years, appellant had 27 criminal or traffic violations, including six felonies, but had never successfully completed a probationary sentence. The district court reasoned that because of appellant’s past history of failure on probation, confinement would provide him with the opportunity to address his behaviors, and “[i]t would unduly depreciate the seriousness of the violation if probation were not revoked. [Appellant] is not able to follow through with his probationary conditions and has demonstrated an inability to do so.”

The district court considered the *Austin* factors and its findings are supported by the record. The district court did not abuse its discretion by revoking appellant’s probation.

Affirmed.