

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2012).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0741**

State of Minnesota,
Respondent,

vs.

William James Belyeu,
Appellant

**Filed December 9, 2013
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-09-18058

Lori Swanson, Attorney General, St. Paul, Minnesota

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Interim Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Worke, Judge; and Connolly, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges the revocation of his probation, arguing that he was denied due process when he did not receive adequate notice of the uncharged acts that the state

sought to prove at the probation-revocation hearing, and the state failed to prove by clear and convincing evidence that he violated the conditions of his probation. We affirm.

FACTS

In June 2009, appellant William James Belyeu pleaded guilty to first-degree aggravated robbery. The district court sentenced Belyeu to 58 months in prison, but stayed execution of the sentence and placed him on probation for four years. In July 2011, Belyeu pleaded guilty to felony domestic assault, and the district court stayed his 21-month sentence and placed him on probation. While Belyeu was on probation for these offenses, his probation officer (PO) issued several arrest-and-detention orders and probation-violation reports, alleging that Belyeu violated the terms of his probation by failing to remain law-abiding and to abide by the no-alcohol-or-illegal-drug condition.

Prior to Belyeu's probation-revocation hearing, his attorney stated: "I've had a chance to talk with [Belyeu] about what he wants to do with these probation violation allegations, and we are prepared today to go forward with a full contested hearing." The police officer who arrested Belyeu on December 4, 2012, for outstanding warrants testified that at the time of arrest, he found approximately 14 grams of marijuana on Belyeu. A drug-treatment-program counselor testified that Belyeu entered a program but absconded when confronted with positive drug tests.

D.B. testified that on March 11, 2012, she and Belyeu got into an argument and hit each other. Belyeu pulled D.B. off the couch, kicked her in her stomach while she was pregnant with his child, and punched her. D.B. testified that on the night of August 21, 2012, she and Belyeu got into another argument. Belyeu punched her, slapped her, and

pushed her on the bed. The next day, Belyeu left the apartment with D.B.'s cell phone and purse. D.B. called the police after Belyeu told her that he was returning with a gun. On November 23, 2012, D.B. called the police complaining that Belyeu grabbed her by her clothing, pushed her against a wall, and demanded money.

The district court found that the state proved by clear and convincing evidence that Belyeu failed to remain law-abiding by assaulting D.B., and that it was a willful or inexcusable violation of conditions of probation. The district court found that Belyeu's possession of marijuana upon apprehension "smack[ed] of someone who is not amenable to probation." The district court also found that Belyeu "just quit [treatment] when the test results weren't looking good," which was an intentional or inexcusable violation of the conditions of his probation. The district court further found that Belyeu is unamenable to probation and concluded that confinement is necessary to protect the public from further criminal activity and to provide Belyeu the treatment that he needs. The district court revoked Belyeu's probation and executed his 58-month and 21-month sentences. This appeal follows.

DECISION

Due process

Belyeu argues that he was denied due process, claiming that he did not receive adequate notice of the allegations that the state sought to prove at the probation-revocation hearing. Typically, "[w]hen constitutional issues involving due process are raised, this court reviews the [district] court's legal conclusions de novo." *State v. Heath*, 685 N.W.2d 48, 55 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). Here,

however, Belyeu raises this issue for the first time on appeal; thus, we do not have a district court factual finding or legal conclusion to review.

Belyeu's assertion of a due-process violation is without merit because at his probation-revocation hearing, his attorney stated: "I've had a chance to talk with [Belyeu] about what he wants to do with these probation violation allegations, and we are prepared today to go forward with a full contested hearing." If Belyeu were denied notice he would not have expressed readiness for the hearing. Moreover, this court generally will not decide issues not raised at the district court, including constitutional issues. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Because Belyeu did not raise a due-process violation to the district court, we will not address it on appeal. *See State v. Austin*, 295 N.W.2d 246, 252 (Minn. 1980) (stating that a probationer is required to receive notice of the alleged grounds for revocation, but because the notice issue was not raised at the revocation hearing, the issue was waived).

Probation revocation

Belyeu also argues that the state did not prove by clear and convincing evidence that he failed to remain law-abiding. The state has the burden of proving the probation violation by clear and convincing evidence. Minn. R. Crim. P. 27.04, subd. 3. 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." *Austin*, 295 N.W.2d at 249-50. When 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.

The district court concluded that Belyeu intentionally or inexcusably violated the conditions of his probation by committing three assaults, one terroristic threat, and one act of theft against D.B. This conclusion is fully supported by D.B.’s testimony that Belyeu pulled her off the couch, kicked her, and punched her during one argument; punched her, slapped her, pushed her, fled with her property, and threatened to return with a gun during another argument; and grabbed her by her clothing and pushed her against a wall during a third argument.

Belyeu asserts that the evidence of the assaults was insufficient because D.B. recanted the allegations she made to the police. But the district court determines issues of credibility. *State v. Pendleton*, 706 N.W.2d 500, 512 (Minn. 2005). D.B. admitted that she did not cooperate and recanted her statements because she did not want Belyeu to go to jail. But D.B. also stated that she testified accurately about the incidents. The district court, acknowledging D.B.’s contradictions, determined that she was credible. The district court stated: “I think that [D.B.’s] testimony on the stand was fairly consistent. . . . I took her version of events as a witness before this [c]ourt as what did truly happen.”

Additionally, the evidence also supports the district court’s conclusion that Belyeu intentionally or inexcusably violated his probation by failing to complete treatment when he “just quit when the test results weren’t looking good.” The district court stated: “What I see is sort of [a] mental disposition . . . that [Belyeu] is the one that’s going to decide

how he is going to have his chemical dependency issue dealt with, and that just simply isn't the case." Finally, the evidence supports the district court's conclusion that Belyeu violated his probation by possessing and using marijuana. The district court stated: "[Belyeu] is apprehended while meeting with his [PO] . . . with several individually packaged dosages of marijuana. It smacks of someone who is not amenable to probation."

Belyeu makes no argument regarding the district court's conclusion that he violated his probation by failing to undergo chemical-dependency treatment. And regarding the district court's conclusion that Belyeu violated the conditions of his probation by possessing and using marijuana, he states only that the case should be remanded to the district court to consider whether this violation supports revoking his probation. But the district court already determined that Belyeu's leaving treatment was an intentional or inexcusable violation and that his marijuana possession was indicative of someone who is not amenable to probation. The record supports the district court's findings and conclusions. Therefore, the district court did not abuse its discretion by revoking Belyeu's probation and executing his sentences.

Affirmed.