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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0311**

State of Minnesota,
Respondent,

vs.

James Lloyd Karls,
Appellant.

**Filed September 29, 2009
Affirmed
Shumaker, Judge**

Benton County District Court
File No. 05-CR-07-992

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Robert J. Raupp, Benton County Attorney, Benton County Courthouse, 615 Highway 23, Foley, MN 56329 (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Cathryn Y. Middlebrook, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Lansing, Presiding Judge; Shumaker, Judge; and Hudson, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

Appellant challenges the district court's revocation of his probation, arguing that the district court abused its discretion because the evidence did not establish that the violations of his probation were intentional or inexcusable, or that the need for confinement outweighed the policies favoring probation. We affirm.

FACTS

Appellant James Lloyd Karls pleaded guilty to criminal sexual conduct in the first degree for engaging in sexual intercourse with his 13-year-old daughter. Finding Karls amenable to probation, the district court granted his motion for a dispositional departure from the sentencing guidelines presumptive executed term of 144 months, stayed execution of his sentence, and placed him on probation for 30 years, subject to various conditions.

Among Karls's probationary conditions were the requirements that he complete sex-offender treatment at CORE Professional Services; have no contact with the victim, his other daughters, or any other minor females until his therapist deemed such contacts appropriate; and cooperate and be truthful with his probation agent.

About four months after sentencing, CORE terminated Karls from its treatment program. Alleging that Karls failed to satisfy the probationary condition of sex-offender treatment and that he violated several other probationary conditions, the state moved for an order revoking Karls's probation and executing the presumptive sentence.

After an evidentiary hearing, the district court found that Karls had violated his probation by failing to complete sex-offender treatment, by having telephone contact with one of his daughters, by missing psychiatric appointments and going off his medication, and by being dishonest with his probation agent on various occasions about varied issues. The district court then revoked his probation and his stayed sentence, and imposed the presumptive executed sentence of 144 months of imprisonment.

Contending that this was the first time he violated his probation, that his violations were not intentional, and that the district court failed to follow applicable law, Karls appealed.

D E C I S I O N

The district court enjoys broad discretion in determining the sufficiency of the evidence to support the revocation of probation, and we will reverse only upon a clear abuse of that discretion. *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). A district court's findings are accorded substantial deference on appeal and will not be overturned unless clearly erroneous. *State v. Osborne*, 732 N.W.2d 249, 253 (Minn. 2007). Before the district court may properly exercise its discretion to revoke probation, it must designate the condition or conditions it finds to have been violated; it must find that the violation was intentional or inexcusable; and it must determine that the need for confinement outweighs the policies favoring probation. *State v. Modtland*, 695 N.W.2d 602, 606 (Minn. 2005); *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980).

Karls does not contest the state's allegations but rather offers explanations in mitigation, contending that his violations were not intentional and that he had been trying

to comply with his probationary conditions. During the evidentiary hearing, he admitted, when asked by his attorney, that he had not been honest with his probation agent and CORE treatment personnel:

Q. Do you feel you've been dishonest in therapy up to this point?

A. Yeah, I've been dishonest.

Karls also agreed that he had engaged in what his probation agent described as “triangulating treatment team members,” in which Karls told one story to his probation agent, a different story to his social worker, and yet another to his therapist. The probation agent testified that Karls would “wait for the three of us to come together to confront him, and then he would change those stories.” Karls testified that this happened because “everybody uses such a big vocabulary of words that I don't understand, and . . . it always comes out to sound different, and I mean, I'm not real smart.”

Although the record shows that Karls would eventually tell the truth about various treatment and probation-related issues—such as asking another daughter to expose her breasts; misleading his landlady to believe he had no restrictions about being around children; and having cell phone contact with his youngest daughter—the truth emerged only after his probation agent and treatment personnel confronted him with his dishonesty. Furthermore, there appeared from the evidence to have been a pattern of dishonesty and evasions requiring the professionals to repeatedly coax truthfulness and accuracy from Karls.

The district court received into evidence the CORE termination letter from Karls's therapist in which she stated that Karls had “failed to make adequate progress in

treatment,” “has been dishonest about his abusive behavior,” and “has demonstrated many times that he is willing to disregard rules put in place for the safety of his family, for his own wants.” In finding Karls’s termination from treatment to be a violation of his probation, the district court noted that “sex treatment is a key item for you”; that Karls’s probation agent would not recommend another treatment program; and that, in his therapist’s opinion, Karls is not currently amenable to treatment. Karls offered no countervailing evidence but rather argued that he is still amenable to treatment and is willing to continue to comply with his probationary requirements.

Karls urges that the evidence does not support a finding that his violations were intentional or inexcusable, and that, even though the district court found that some violations were intentional, it failed to specify which ones it found to be so. Karls’s denial that his violations were intentional raised a credibility issue for the district court. We give substantial deference to the credibility determinations of the fact-finder. *See State v. Spanyard*, 358 N.W.2d 125, 127 (Minn. App. 1984) (stating that “the function of the fact-finder is to weigh the credibility of witnesses”), *review denied* (Minn. Feb. 27, 1985).

The district court sufficiently identified the violations it found intentional by reciting its findings as to various instances of dishonesty and then stating that “[s]ome of your violations are inexcusable and intentional. I think I’ve kind of covered that.” The context of the district court’s findings leads to the reasonable conclusion that the district court meant that the instances of dishonesty that the district court described were intentional and inexcusable. The district court found that Karls had “demonstrated a

tendency to hedge and not fully disclose and to mislead when [he] didn't want to admit something, all of which is a form of dishonesty.”

It is difficult to imagine what Karls's persistent dishonesty about treatment-related issues could be if not intentional, or at least inexcusable. There was not an isolated instance which might be the product of a misunderstanding. Rather, there was a series of dishonest statements or omissions. The district court did not find credible Karls's protestations that his violations were unintentional. We see no abuse of discretion in this determination.

Citing the fact that this was the first time he violated his probation and relying, in part, on the unpublished case of *State v. Bruce*, No. A07-600, 2008 WL 2102893 (Minn. App. May 13, 2008), Karls argues that the evidence does not show that the need for confinement outweighs the policies favoring probation.

We note first that *Bruce* is neither precedential nor on point. The probationer in that case was terminated from sex-offender treatment because of financial problems and not for noncompliance with treatment conditions. *Bruce*, 2008 WL 2102893, at *2. Because he still had three years left on his probationary term, had been given no deadline for completing treatment, and was engaged in searching for alternative programs, we held that he was not in violation of his probation for failing to complete treatment. *Id.* There was no evidence in *Bruce* that the probationer was unamenable to treatment.

Karls, on the other hand, was terminated for failing to comply with treatment conditions that his therapist deemed essential. And the sole evidence before the district

court on the issue of Karls's amenability to treatment was his therapist's opinion that "James Karls is unamenable to outpatient sex offender treatment at this time."

Under *Austin*, confinement is appropriate if it is "necessary to protect the public from further criminal activity by the offender" 295 N.W.2d at 251. The district court here found treatment to be a "key item" for Karls and then considered evidence from his therapist that he continues to engage in "the same behavior that [he] was exhibiting at the time he sexually abused his daughters." Although Karls expressly disputes that he is a danger to the public and that he would again commit a sex offense, the district court found the therapist's opinion more credible and did not abuse its discretion in doing so.

Austin also provides that "[t]he decision to revoke cannot be a reflexive reaction to an accumulation of technical violations but requires a showing that the offender's behavior demonstrates that he or she cannot be counted on to avoid antisocial activity."

Id. (quotations omitted.)

Karls contends that the district court's revocation of his probation was "reflexive," noting that the district court stated, "You don't have any hedge room here. You don't have any wiggle room." The context of those statements reveals that the district court was explaining that, with a less serious crime, it might be inclined to give the probationer more leeway. The record shows that the district court departed from the presumptive sentence because it appeared that Karls was amenable to treatment. The evidence adduced at the revocation hearing supported the conclusion that Karls is not only unamenable to treatment, but that the behaviors that led to his crime remain unchanged.

The district court considered and commented on that evidence and made a reflective, rather than a reflexive, decision on the basis of the credible evidence presented. Karls's violations were not "technical violations" but rather were behaviors that tended to thwart the effectiveness of treatment and that implicated public-safety concerns. The district court neither abused its discretion nor committed clear error in revoking Karls's probation.

Affirmed.