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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-664**

In the Matter of the Welfare of:
P. D. Y., Child

**Filed March 9, 2010
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-JV-08-4004

Marie L. Wolf, Interim Chief Appellate Public Defender, Jodie L. Carlson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Michael K. Walz, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Wright, Judge.

UNPUBLISHED OPINION

ROSS, Judge

P.D.Y. appeals from the district court's revocation of a stay of adjudication in his juvenile delinquency proceeding. The district court revoked the stay because P.D.Y. failed to satisfy a condition of the stay, completion of a sex-offender treatment program. P.D.Y. argues that the revocation constitutes an abuse of the district court's discretion because the stay period was too short for him to complete the treatment. Because the

district court's fact findings support its conclusion that P.D.Y.'s failure to complete treatment in a timely fashion was intentional and inexcusable, we affirm.

FACTS

This case concerns separate delinquency proceedings originating in Dakota and Rice counties that were transferred to Hennepin County for disposition. P.D.Y. was charged in Dakota County with criminal sexual conduct and pled guilty. He was also charged in Rice County with three counts of criminal sexual conduct based on incidents unrelated to the Dakota County case, and the Rice County District Court found him guilty of two counts. Both cases were transferred for disposition to Hennepin County, where P.D.Y. resides.

On June 5, 2008, the Hennepin County District Court adjudicated P.D.Y. delinquent on the Rice County charges and ordered him to complete an outpatient sex-offender treatment program. He began sex-offender treatment at Storefront Treatment Center on June 18 and unsuccessfully appealed his conviction of the Rice County charges.

When the district court adjudicated P.D.Y. on the Rice County charges, it stayed disposition of the Dakota County charge for 90 days to give P.D.Y. an opportunity to withdraw his guilty plea in that county. P.D.Y.'s Dakota County plea was never withdrawn. But in late June, the Dakota County District Court issued amended findings and an order "requesting" that adjudication on the Dakota County charge be stayed for 180 days "as long as [P.D.Y.] completes recommended sex offender treatment and complies with probation." In August 2008, the Hennepin County court stayed

adjudication of the Dakota County charge for 180 days and ordered P.D.Y. to “attend and successfully complete the out-patient sex offender program where he is already enrolled at Storefront.”

But P.D.Y. made poor progress in the program. To successfully complete the Storefront sex-offender treatment program, P.D.Y. was required to complete 19 written assignments and discuss them with a Storefront therapist. Although the program normally includes both individual counseling and group therapy, P.D.Y., who is deaf, was not required to participate in group sessions because Storefront staff feared that his sign-language interpreter’s presence might adversely affect other patients’ confidentiality. P.D.Y. began meeting with his therapist weekly in June 2008, and the therapist accommodated his hearing disability by spending extra time with him and explaining concepts that he had difficulty understanding. At the end of each session, the therapist encouraged P.D.Y. to take assignments home to complete, but he did not. By mid November, nearly five months into treatment, P.D.Y. had completed only two of the 19 required assignments.

At a November disposition-review hearing, P.D.Y.’s probation officer recommended that the stay be revoked because P.D.Y. was not engaged in treatment and would not finish the treatment program before his stay expired in February. The district court did not revoke the stay but reminded P.D.Y. that he had only three months left to complete treatment.

In the final three months of the stay, P.D.Y. markedly increased the pace of completing his treatment assignments. He began taking assignments home, and by the

beginning of February 2009, he had completed 12 more. Despite P.D.Y.'s newfound enthusiasm, however, he did not complete all 19 assignments before his stay expired on February 14, and his probation officer again recommended that the court revoke the stay.

P.D.Y. requested a contested probation-revocation hearing. At the two-day hearing, the district court received several exhibits and heard testimony from P.D.Y.'s mother, his therapist at Storefront, and his probation officer. The district court concluded that P.D.Y. had violated the conditions of his probation by failing to complete treatment before the stay expired and that this violation was intentional and inexcusable. It therefore revoked the stay and adjudicated P.D.Y. delinquent on the Dakota County charge. P.D.Y. appeals.

D E C I S I O N

P.D.Y. challenges the district court's stay revocation. Adjudicating a child for an offense after initially granting a stay is a probation revocation. Minn. R. Juv. Delinq. P. 15.05, subd. 4(E). The state must prove a probation violation by clear and convincing evidence, Minn. R. Juv. Delinq. P. 15.07, subd. 4(D), and the child has a right "to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation," *id.*, subd. 4(A). "The district court has broad discretion in determining whether the evidence justifies the revocation of probation," and we will not reverse absent an abuse of that discretion. *In re Welfare of R.V.*, 702 N.W.2d 294, 298 (Minn. App. 2005).

P.D.Y. contends that the district court abused its discretion by revoking the stay because his violation resulted from an impossible condition that he complete treatment in

only eight months. In the adult criminal context, a probation violation “is mitigated where it was unintentional or excusable.” *State v. Cottew*, 746 N.W.2d 632, 636 (Minn. 2008). Even if we assume that a similar mitigation analysis applies in the juvenile delinquency context, the district court concluded that P.D.Y.’s violation was intentional and inexcusable. This conclusion is supported by the district court’s fact findings. It found that the Storefront treatment program could be completed in eight months and that P.D.Y. had approximately eight months to complete treatment. And it found that despite the therapist’s encouraging him to take assignments home to complete them after every session, P.D.Y. intentionally failed to do so; the result was that in the five months before the November review hearing, he had completed only two of 19 required assignments.

The facts belie P.D.Y.’s assertion that it was impossible for him to complete the treatment program in eight months because of his hearing impairment. The district court’s findings do not support a conclusion that P.D.Y.’s disability had any significant effect on his ability to complete the written Storefront assignments and discuss them with his therapist. To the contrary, the district court found that P.D.Y. is intelligent and capable of understanding his Storefront assignments, and after the November hearing, P.D.Y. began taking assignments home and completed 12 in only three months. P.D.Y. also had been successful in his high school studies, maintained good grades, and frequently submitted his school assignments in a timely manner.

It appears that if P.D.Y. had applied himself in the five months before the November hearing, he could have completed treatment within the eight months. The evidence clearly demonstrates that P.D.Y. was capable of writing 19 assignments within

eight months. We recognize that completing written assignments often required discussing them with the therapist and amending them. Although P.D.Y. had written 14 assignments by the end of the stay, he had discussed only 12 of them with his therapist, and the therapist anticipated having to go back and revisit some of the assignments before deeming them complete. But the therapist also indicated that the need to revisit assignments was due in part to P.D.Y.'s unwillingness to take full responsibility for the Dakota County charge. The district court was therefore entitled to conclude that any inability to complete all 19 assignments was not a result of P.D.Y.'s disability but of his lack of enthusiasm for writing the assignments or his unwillingness to admit responsibility for the Dakota County offense, or a combination of the two. The district court had sufficient basis to conclude that P.D.Y.'s own procrastination or lack of cooperation caused him to fail to complete treatment before the stay expired.

P.D.Y. argues that the record does not clearly show that he fully understood that he was required to complete treatment before the stay expired. He accompanies this assertion with scant argument. We recognize that the district court must "ensure that the conditions that the probationer is alleged to have violated were actually imposed and that the juvenile had notice that violation of the conditions of probation could result in revocation." *R.V.*, 702 N.W.2d at 303. But the district court found that the Dakota County court's June 2008 amended order provided P.D.Y. with notice that he must complete treatment at Storefront as a condition of his stay of adjudication. P.D.Y.'s argument therefore fails.

P.D.Y. also argues that one of the district court's reasons for revoking the stay is now moot. In its revocation order, the district court expressed concern that if P.D.Y.'s Rice County conviction were reversed on appeal and the stay in the Dakota County case expired, the district court would lose jurisdiction and P.D.Y. "would essentially be an untreated sex offender." P.D.Y. argues that because the Rice County conviction was ultimately affirmed, preserving the district court's jurisdiction over P.D.Y. until he turns 19, the district court's concerns that he would not finish treatment are moot. It is not apparent how this argument would change the result; the district court was justified in revoking the stay and adjudicating P.D.Y. delinquent because he intentionally and inexcusably violated a condition of the stay.

Affirmed.