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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-679**

State of Minnesota,
Respondent,

vs.

Christopher Joseph Larson,
Appellant.

**Filed December 15, 2009
Affirmed
Halbrooks, Judge**

Goodhue County District Court
File No. 25-CR-07-2105

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

Stephen Betcher, Goodhue County Attorney, Courthouse, 454 West 6th Street, Red Wing, MN 55066 (for respondent)

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

Considered and decided by Klaphake, Presiding Judge; Halbrooks, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

HALBROOKS, 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

In March 2008, appellant Christopher Joseph Larson pleaded guilty to first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(g) (2006), for repeated sexual penetration of his 15-year-old half-sister. The district court sentenced Larson to 144 months, stayed, with 30 years' probation. The district court placed several conditions on Larson's probation, including the completion of a chemical-dependency program and any required aftercare.

Larson entered an in-patient chemical-dependency program on November 17, 2008. During the course of this program, Larson was accused of engaging in a prohibited, exclusive relationship with a female participant. Larson was not discharged from the program, but signed a "behavioral contract" agreeing to have no further contact with this woman. Larson was accused of continuing his relationship "underground." Larson moved from the in-patient program to Pathways, a halfway-house for chemical dependency.

Ten days after starting at Pathways, on December 25, Larson went to a sobriety meeting in a taxi with a female resident. Pathways prohibits its participants from

associating with female residents. Violation of this rule results in automatic discharge. On December 29, the female from the taxi called Pathways and left a message, asking that Larson not talk about her or “their relationship, because he was going to get her in trouble.” On December 30, this woman called again and told Pathways staff that she and Larson were having a physical relationship. Another resident confirmed seeing Larson and this woman together. Larson denied this relationship, but admitted to other rule violations while at Pathways.

Larson was discharged from Pathways on January 5, 2009, for multiple rule violations. Based on this discharge, Larson’s probation officer sought to revoke his probation. A probation-revocation hearing was held on January 16, 2009. Larson, a counselor from Pathways, and Larson’s probation officer each testified about his rule violations while at Pathways. The district court revoked Larson’s probation for failing to complete chemical-dependency treatment and executed his original sentence. This appeal follows.

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). “When determining if revocation is appropriate, courts must balance the probationer’s interest in freedom and the state’s interest in insuring his rehabilitation and the public safety, and base their decisions on sound judgment and not just their will.” *State v. Modtland*, 695 N.W.2d 602, 606–07 (Minn. 2005) (quotations omitted). “The 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." *Austin*, 295 N.W.2d at 251 (quotations omitted). The supreme court in *Austin* articulated three specific findings the district court must make before revoking probation: "1) designate the specific condition or conditions that were violated; 2) find that the violation was intentional or inexcusable; and 3) find that the need for confinement outweighs the policies favoring probation." *Id.* at 250. The district court must make these findings on the record and "should not assume that [it] ha[s] satisfied *Austin* by reciting the three factors and offering general, non-specific reasons for revocation." *Modtland*, 695 N.W.2d at 608. Larson argues that the district court abused its discretion with respect to its findings under the second and third *Austin* factors.

In finding that Larson's violation was intentional and inexcusable, the district court adopted as findings all of the testimony offered by the state as to Larson's probation violations. The district court's findings, therefore, include the fact that Larson was informed of the rules at Pathways and understood the rules. The district court found that, despite this understanding, he violated the rules on multiple occasions. He violated the rules by: (1) riding in the taxi with a female, (2) having a physical relationship with a female, (3) not following procedures regarding visitation with his children, (4) breaking a window, and (5) not applying for a sufficient number of jobs. The district court did not "give [Larson] credibility for what [Larson] . . . testified to," and "adopt[ed] completely, with full credibility, the testimony from the state's witnesses."

Larson argues that the district court abused its discretion in finding the violation intentional and inexcusable because Larson was not given a second chance to comply with the rules. But the first in-patient treatment program gave Larson a second chance after he violated the rules of that program. He nevertheless failed to comply with the (same) rules at Pathways. Based on the number of rules that he violated while at Pathways and the fact that the district court specifically found Larson to be not credible in his denials or excuses for these violations, we do not agree that the district court abused its discretion by finding that Larson's probation violation was intentional and inexcusable.

Larson also contends that the district court abused its discretion by finding that the need for confinement outweighed the policies favoring probation. This third *Austin* factor is satisfied if “(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.” *Austin*, 295 N.W.2d at 251 (quotation omitted). The district court specifically found that “confinement is necessary to protect the public from further criminal activities, and that not . . . sending you to prison right now would unduly depreciate the seriousness of the violation if your probation was not revoked.”

Larson argues that confinement is not necessary to protect the public from criminal activity because he has remained sober, has not committed any other criminal offenses, and the women he was involved with were age-appropriate. In weighing the

need for confinement, the district court must base its decision to revoke probation on the original offense and the intervening conduct of the offender. *Modtland*, 695 N.W.2d at 607. Considering the original offense, the district court found “that there was a pattern there of extremely serious criminal sexual conduct offenses committed over a period of time against the victim in the case, . . . and an on-going pattern of manipulation.” The district court noted that the pattern had “carried over into [Larson’s] probationary status.” Larson’s decision to engage in the same pattern of behavior that led to the original offense supports the district court’s conclusion that confinement was necessary to protect the public from further criminal behavior.

Larson also argues that not revoking his probation would not unduly depreciate the seriousness of the violation because the violations were “minor and technical.” But the district court did not characterize the violations as minor and technical. The district court specifically found that Larson was “making every effort to have sexual relations with women, in whatever setting [he had] the ability to do so,” and that Larson engaged in “a continuing pattern of not obeying the rules, lying to people.” The district court emphasized that “[t]hese are serious rule infractions, a full and complete pattern of defiance and failure to recognize the seriousness of the original offenses.” The record supports the district court’s characterization. We therefore conclude that the district court did not abuse its discretion by finding that not revoking probation would unduly depreciate the seriousness of the violations.

Finally, Larson argues that “an interim sanction of local jail time was available as a consequence for the halfway house rule violations.” But the district court specifically

considered and rejected local jail time. After carefully considering all three factors required under *Austin*, the district court's decision to revoke Larson's probation was not an abuse of discretion.

Affirmed.