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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1091

State of Minnesota,
Respondent,

vs.

Nicole Marie Poillon,
Appellant.

Filed April 16, 2018
Affirmed
Bratvold, Judge

Winona County District Court
File Nos. 85-CR-11-1818,
85-CR-10-877, and
85-CR-10-876

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

Karin L. Sonneman, Winona County Attorney, Christina M. Davenport, Assistant County Attorney, Winona, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sean M. McGuire, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Bratvold, Judge; and Florey, Judge.

U N P U B L I S H E D O P I N I O N

BRATVOLD, Judge

In this probation-revocation appeal, appellant argues that the district court erroneously revoked her probation for two reasons: (1) the alleged condition was never imposed, and (2) if the condition was imposed, it was impermissibly vague. Because the district court gave appellant adequate notice to stay away from a bar as a condition of her release, and because the condition was sufficiently specific to include the entire bar property, we affirm.

FACTS

On February 28, 2013, a jury found appellant Nicole Marie Poillon guilty of three first-degree controlled-substance crimes arising from a series of cocaine sales that she made in April 2010 to a confidential informant working with the Winona Police Department. Before sentencing, Poillon moved for downward dispositional and durational departures from the Minnesota Sentencing Guidelines. In April 2013, the district court granted Poillon's motion, sentenced her to three concurrent 132-month sentences, stayed execution for 30 years, and imposed a $15,000 fine.[1]

As a condition of her stayed sentence, the district court imposed specific release conditions, including that Poillon must remain law abiding; she must not use, possess, or consume alcohol or controlled substances; she must not enter any bars or liquor stores; and

[1] The state appealed Poillon's sentence, arguing that the district court abused its discretion by departing from the guidelines. *State v. Poillon*, No. A13-1242, 2014 WL 1408051, at *1-2 (Minn. App. Apr. 14, 2014). We affirmed. *Id.* at *3.

"under no circumstances [was Poillon] to find [her]self on the property of the Handy Corner Bar." In fact, the district court described the Handy Corner as a "snake pit."

In March 2015, probation alleged that Poillon violated her release conditions by using controlled substances and leaving the state without permission. In April 2015, the state arrested and charged Poillon with several new felony offenses, including counterfeit currency, possession of a firearm as an unauthorized person, and attempted forgery. In July and October 2015, probation alleged that Poillon violated her release conditions by using controlled substances.

In December 2015, Poillon reached a "global resolution" with the state to settle the pending alleged probation violations and charges. Poillon admitted to violating probation and entered an *Alford* plea on the April 2015 charges. In January 2016, at Poillon's sentencing hearing, the district court reinstated Poillon's original terms of probation, for example: remain law-abiding, no use or possession of controlled substances, and "stay out of the Handy Corner."

In March 2017, probation again alleged that Poillon had violated her release conditions by failing to remain law-abiding, using controlled substances, associating with a known drug user, and going to the Handy Corner Bar. Poillon entered a denial. The district court held a three-day, contested revocation hearing, after which it determined that Poillon had knowingly and without excuse violated her release conditions by using methamphetamine and going to the Handy Corner Bar.

In April 2017, the district court held an additional hearing to determine the appropriate disposition. Poillon argued that she should be reinstated to probation because

she went to the apartment above the Handy Corner Bar to see her daughter. Although Poillon had moved to Illinois, her daughter lived at a residential treatment facility in Eau Claire, Wisconsin. Because her daughter's treatment required home visits, Poillon arranged to meet her daughter in the apartment above the Handy Corner Bar. Poillon stated that she did not think the apartment was part of the Handy Corner Bar because the apartment has a different postal address.

The district court did not find Poillon's explanation persuasive. The district court found that the "Handy Corner is the whole building. It's not a separate apartment from the bar. That is a house [that] was converted into a bar." The district court questioned Poillon's credibility and doubted Poillon's confusion, stating: "You were specifically told to stay away from the Handy Corner. . . . [I]f you're not simply lying to me, then it shows your judgment has been significantly impaired by the use of controlled substances." The district court found that Poillon's confinement was "necessary to protect the public from further criminal activity" and to provide effective treatment opportunities. The district court also found that continuing probation would "unduly depreciate the seriousness of the violation." The court executed Poillon's 132-month sentence. Poillon appeals.

D E C I S I O N

Poillon argues that the district court erred by revoking her probation based on a condition that was never ordered, specifically that Poillon was required to "stay away" from the Handy Corner Bar. Alternatively, Poillon argues that this condition was impermissibly vague if it was meant to include the apartment above the bar, so her

probation cannot be revoked for violating it. The state argues that the probation condition was "clear and unambiguous" and asks us to affirm the executed sentence.

The state has the burden of proving an alleged probation violation by clear and convincing evidence. *See* Minn. R. Crim. P. 27.04, subd. 2(1)(c)b. 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." *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). 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." *Id.* at 249-50.

A. The district court provided "fair warning" of the relevant release condition.

The district court found that Poillon violated a specific condition of her probation by failing "to avoid the Handy Corner." Poillon argues that the district court never ordered her to stay away from the apartment above the Handy Corner Bar, and therefore, erred by revoking her probation.

To satisfy due process, a probationer must "be given fair warning of those acts which may lead to a loss of liberty." *State v. Ornelas*, 675 N.W.2d 74, 80 (Minn. 2004) (quotation omitted). Before a district court may find a probation violation, the condition alleged to have been violated must have been actually imposed by the court and the probationer must have had adequate notice of this condition. *Id.* Therefore, a court must "state precisely the terms of the sentence" including probation conditions. Minn. R. Crim.

P. 27.03, subd. 4(A). "[I]f noncriminal conduct could result in revocation, the trial court should advise the defendant so that the defendant can be reasonably able to tell what lawful acts are prohibited." *Ornelas*, 675 N.W.2d at 80 (quotation omitted).

Our review of the record reveals that the district court provided Poillon with notice of the relevant release condition on several occasions. At the sentencing hearing, the district court imposed specific conditions on Poillon's probation, including that "under no circumstances are you to find yourself on the property of the Handy Corner Bar." Moreover, the district court reminded Poillon of this condition at the January 2016 sentencing hearing, stating "stay out of the Handy Corner."

Poillon also argues that there was no evidence presented that she entered the Handy Corner Bar itself, and that the district court only found that she was in the apartment above the bar. We are not persuaded for two reasons. First, Poillon's daughter's case worker testified that Poillon had told her she was living above the Handy Corner Bar, and that the only entrance to the apartment was through the bar. Thus, the record includes evidence from which the district court could find that Poillon entered the bar and the apartment. Second, the district court was not required to believe Poillon's claim that she only entered the apartment above the bar, or that the apartment and the bar were separate places. The district court explicitly found that it did not believe Poillon's claims. We defer to the district court's credibility determinations. *See State v. Olson*, 884 N.W.2d 906, 911 (Minn. App. 2016), *review denied* (Minn. Nov. 15, 2016).

We conclude that the district court provided adequate notice to Poillon that her release was specifically conditioned, in part, on staying away from the Handy Corner

property. Further, record evidence supported the district court's determination that Poillon knowingly and without excuse violated this condition.

B. The relevant release condition was not impermissibly vague.

Poillon argues that the condition was impermissibly vague because the district court did not explicitly state that the apartment above the bar was part of the Handy Corner property. The state argues that the condition was clear and unambiguous. To determine whether a probation condition is vague, we consider whether "the probationer [was] reasonably able to tell what lawful acts were prohibited." *Austin*, 295 N.W.2d at 251.

Poillon argues that "stay away from the Handy Corner" is not a valid condition because it does not clearly designate the "range around the Handy Corner to avoid." We disagree. The term "stay away" provides a clear indication of what Poillon was prohibited from doing. A condition that orders a probationer to stay away from a geographical location and restricts the "places the probationer may frequent" is a common term of probation. *See State v. Friberg*, 435 N.W.2d 509, 515-16 (Minn. 1989).[2] A reasonable probationer would

[2] Poillon cites an unpublished decision of this court to support her argument that a condition containing the term "stay out of" is vague. First, unpublished opinions are not precedent. *See* Minn. Stat. § 480A.08, subd. 3(b) (2016); *State v. Ellis-Strong*, 899 N.W.2d 531, 537 (Minn. App. 2017). Second, *State v. Barberg* is inapposite. In *Barberg*, this court examined an order for protection stating, "[defendant] shall stay away from where [victim] resides." A04-2058, 2005 WL 3289285, *3 (Minn. App. Dec. 6, 2005). The defendant challenged the order because he owned a 70-acre farm with several buildings and crop land, and the victim rented a house on his farm. *Id.* at *1. We found that the order was vague or ambiguous because defendant "was not really put on fair notice of what he could do and could not do . . . . By not detailing how [defendant] was to avoid [victim], yet also effectively manage his farm, [defendant] was left to guess at the restraining orders prohibitions." *Id.* at *3. That is not the case here. Poillon was not left to guess what the condition prohibited. Also, unlike the defendant in *Barberg* who needed to tend to his farm,

have understood that "stay away from the Handy Corner *property*" meant that Poillon was prohibited from entering the property and not merely excluded from the bar.

Poillon also complains that when the district court imposed the probation condition that she "stay away from those people," it failed to define "those people" and, therefore, this condition was impossible for her to follow. The district court determined, however, that the state did not prove that Poillon violated this probation condition by clear and convincing evidence. Therefore, whether Poillon failed to stay away from "those people" was not a factor in the district court's decision to revoke probation.

We note that we may affirm the district court's revocation of probation on any basis that is clear from the record and on grounds other than those cited by the parties on appeal. *See Louis v. Louis*, 636 N.W.2d 314, 316 (Minn. 2001). At the sentencing hearing, one of the specific conditions that the district court applied to Poillon's probation was that she "must not use, possess, or consume alcohol or controlled substances." After the contested revocation hearing, the district court determined that the state had proven, by clear and convincing evidence, that Poillon had violated her release conditions by using methamphetamine. Poillon does not challenge this determination on appeal. Because the district court could have revoked Poillon's probation solely based on her use of methamphetamine, we conclude that affirmance is also supported by this alternate ground.

Poillon did not need to visit her daughter in the apartment above the Handy Corner Bar. She could have chosen a different location.

For the reasons stated, we conclude that the district court did not abuse its discretion by revoking Poillon's probation and executing her prison sentence.

Affirmed.