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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1655**

State of Minnesota,
Respondent,

vs.

Thomas Brian Sobtzak,
Appellant.

**Filed April 16, 2018
Affirmed
Hooten, Judge**

Crow Wing County District Court
File No. 18-CR-16-2277

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

Donald F. Ryan, Crow Wing County Attorney, Brainerd, Minnesota; and

Todd S. Webb, Special Assistant County Attorney, Grand Rapids, Minnesota (for
respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant contends that the district court abused its discretion by revoking his probation, arguing that policies favoring probation outweigh the need for his confinement. He specifically argues that the state failed to establish that confinement was necessary because it did not show that (1) he was charged with any new crimes, (2) there was any evidence that his treatment goals could only be accomplished in prison, and (3) his violations, which occurred within the first two months of being on probation, would unduly depreciate the seriousness of his violations if probation was revoked. We affirm.

FACTS

Appellant Thomas Brian Sobotzak pleaded guilty to 23 counts of felony violation of an order for protection, in violation of Minn. Stat. § 518B.01, subd. 14(d)(1) (2014). In January 2017, the district court imposed on Sobotzak consecutive sentences of one year and one day in prison for the first ten counts, each to be served consecutively with the sentences from another court file, and concurrent sentences of 31 months for the remaining 13 counts. The district court stayed execution of all 23 sentences and placed him on probation for ten years. As part of his probation, the district court imposed several conditions that Sobotzak was required to follow.

Sobotzak's probation officer filed a probation violation report on March 1, 2017. The report indicated that Sobotzak violated the terms of his probation by failing to: (1) inform

her of his recent contact with law enforcement,¹ (2) verify completion of a domestic violence inventory, (3) maintain full-time employment or education, and (4) submit documentation of a discharge plan from prior chemical dependency programming. The report requested that a warrant be issued for his arrest, and police arrested Sobtzak five days later.

The probation officer later amended the report to add three new violations for failing to (5) avoid consuming alcohol or other intoxicants, (6) remain compliant with prescribed medications, and (7) notify her of any change to his address. The probation officer also submitted a memorandum to describe Sobtzak's lack of progress while on probation. She recommended in her memorandum that the district court revoke Sobtzak's probation and execute his sentences.

In July 2017, the district court held a contested probation violation hearing, at which both Sobtzak and the probation officer testified. Sobtzak admitted to each of the seven violations in the report and acknowledged that the violations were intentional and inexcusable. But he argued that the district court should not revoke his probation because the need to execute his sentences did not outweigh the policies favoring probation. In August 2017, the district court ordered that Sobtzak's probation be revoked and that each of his sentences be executed. The district court determined that the policies favoring probation did not outweigh the need for his confinement, finding that (1) Sobtzak is not

¹ In February 2017, Sobtzak was a passenger in a car driven by his girlfriend that was pulled over by police on suspicion of driving while impaired. Sobtzak spoke with police during the incident but did not report the interaction to his probation officer, thereby violating the terms of his probation.

amenable to probation, (2) the seriousness of his violations would be unduly depreciated if his probation was not revoked, and (3) he is in need of correctional treatment.

This appeal followed.

D E C I S I O N

Sobtzak argues that the district court abused its discretion by revoking his probation and executing his sentences. The district court has broad discretion to determine whether sufficient evidence exists to revoke probation, and we will not reverse its decision absent an abuse of that discretion. *State v. Austin*, 295 N.W.2d 246, 249–50 (Minn. 1980). But, the district court’s decision to revoke probation “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.* at 251 (quotation omitted).

To revoke probation, the district court must make findings regarding three factors: (1) the probationer violated a condition of probation; (2) the violation was intentional or inexcusable; and (3) the need for confinement outweighs the policies favoring probation. *Id.* at 250. Whether the district court made the requisite findings of these *Austin* factors presents a question of law that we review de novo. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005). Sobtzak only contends that the district court erred in its findings on the third *Austin* factor because the state failed to present sufficient evidence to satisfy this factor.

“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. Rottelo*, 798 N.W.2d 92, 95 (Minn. App. 2011) (quotation omitted), *review denied* (Minn. July 19, 2011). Specific to the third *Austin* factor, the district court should consider three sub-factors regarding whether:

- (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.

Modtland, 695 N.W.2d at 607.

Sobtzak first claims that his confinement is not necessary because he was not charged with any new crimes during the period that he was on probation. This argument is unpersuasive. Sobtzak’s numerous violations of his probation, even if they do not amount to crimes themselves, reflect the district court’s reasonable assessment that he is unable or unwilling to accept responsibility for his actions and cannot be counted on to remain law abiding. The district court determined that Sobtzak is not amenable to probation because he has a history of domestic violence with the proclivity of developing relationships with vulnerable women whom he later abuses. These findings are consistent with the evidence in the record. The probation officer testified that Sobtzak has an extremely lengthy criminal history of domestic-related violence. She further explained that even while he is on probation, he continues to commit new, felony-level domestic offenses that are increasingly violent. The Minnesota Supreme Court has concluded that a district court does not abuse its discretion by revoking an offender’s probation based upon his

“lengthy history of criminal activity and chronic probation and treatment failures.” *State v. Osborne*, 732 N.W.2d 249, 256 (Minn. 2007).

Sobtzak next argues that the evidence does not support the finding that he must be confined to most effectively receive corrective treatment. The district court found that his chemical dependency treatment was ineffective because his chemical use continued after treatment. The evidence suggests that Sobtzak was not interested in long-term treatment to overcome his chemical dependency issues but rather perceived treatment as an avenue to avoid incarceration. The supreme court has explained that it is not unreasonable for the district court to conclude that outside treatment has failed when the offender has failed to take advantage of treatment opportunities or “show a commitment to rehabilitation.” *Austin*, 295 N.W.2d at 251. One of his probation violations was the result of a urinary analysis screening that tested positive for methadone and opiates. Sobtzak admitted that he was abusing his methadone prescription by taking excessive doses and that he was “scoring some heroin” during his visits to the methadone clinic. Moreover, when police arrested him in March 2017, the officers found five hypodermic needles in the hotel room where he was staying. Contrary to his own opinion, Sobtzak has failed to show that his treatment plan while on probation has been effective. The district court’s finding that Sobtzak is in need of corrective treatment, which can be most effectively provided while in confinement, is adequately supported by the record.

Finally, Sobtzak argues that remaining on probation does not unduly depreciate the seriousness of his violations. He asserts that each of his violations could be addressed through local sanctions such as jail time. The district court noted that Sobtzak has not

shown any willingness to complete domestic violence programming. Indeed, the district court stated that he “has never even tried to enter into domestic violence programming.” The record reveals that Sobtzak told his probation officer that his “only crime is loving women, and loving them too much.” This further explains Sobtzak’s intentional and excusable failure to submit his domestic violence inventory and also supports the district court’s conclusion that he appears unable or unwilling to take accountability for his actions. Therefore, it was not unreasonable for the district court to conclude that keeping Sobtzak on probation would unduly depreciate the seriousness of his seven violations.

For these reasons, we conclude that the district court did not abuse its broad discretion in revoking Sobtzak’s probation because the evidence in the record is sufficient to support the district court’s finding that the need for his confinement outweighs the policies favoring probation.

Affirmed.