STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1787

State of Minnesota,
Respondent,

vs.

Daniel Lee Haley,
Appellant.

Filed July 1, 2024
Affirmed
Larkin, Judge

Scott County District Court
File No. 70-CR-21-3740

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Ronald Hocevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota (for respondent)

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

Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Jesson, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges the district court's revocation of his probation, arguing that the need for his confinement did not outweigh the policies favoring probation. Appellant also challenges the district court's denial of his request for a reduced sentence. We affirm.

FACTS

In March 2021, respondent State of Minnesota charged appellant Daniel Lee Haley with felony domestic assault, alleging that he had two or more previous qualifying convictions and "smacked" BB, the mother of his children, on the arm. Haley pleaded guilty to the charge, and a sentencing hearing was scheduled for a later date.

The probation department prepared a presentence investigation report (PSI), which listed Haley's six prior felony convictions, including two felony burglary convictions and two felony convictions for violating an order for protection (OFP). The PSI noted that, as to domestic violence, Haley "scored at high risk for recidivism." The PSI also noted that Haley previously received a dispositional departure on a felony OFP violation and that Haley was on probation for that offense when he was arrested and pleaded guilty to the current felony domestic assault. The probation department recommended that the district court sentence Haley to serve 27 months in prison for the felony domestic assault.

Nonetheless, at the August 2021 sentencing hearing, the district court granted Haley's motion for another dispositional departure, stayed a 32-month prison sentence, and placed Haley on probation for up to five years. The 32-month sentence was within the

presumptive sentencing range, but the district court indicated that it selected "the high end" of that range so Haley would go to prison "for more time" if he violated probation.

In February 2023, the state alleged that Haley had violated the terms of his probation by failing to remain law abiding, failing to contact probation as directed, and failing to notify probation within 72 hours of his contact with law enforcement. The state alleged that Haley had been charged with two new offenses: felony violation of a harassment restraining order (HRO) and felony domestic assault. The probation department filed a violation report, which noted that Haley had "a long pattern" of violating OFPs and HROs and that the victim "stated that she is scared for her life and her children's [lives]."

Haley pleaded guilty to the felony HRO violation, and the state dismissed the felony domestic-assault charge. Haley admitted that he violated probation. Specifically, he admitted that he failed to remain law abiding and to contact probation as directed. The district court released Haley from custody to attend treatment pending a probation-disposition hearing.

At the probation-disposition hearing, Haley requested a reduced sentence of 24 months pursuant to Minn. R. Crim. P. 27.03, subd. 9, arguing that reduction of his previously stayed 32-month sentence was permissible under caselaw. The district court denied Haley's motion, stating that it was "not aware of any law that permits the [c]ourt to resentence." Next, the court described Haley's extensive criminal record and said that it was not going to "question th[e] wisdom" of the 32-month sentence that was previously imposed and stayed.

The district court found that Haley violated the conditions of probation by failing to remain law abiding, that the violation was intentional and inexcusable, and that the need for confinement outweighed the policies favoring probation. As to the last finding, the district court reasoned that "it would unduly depreciate the seriousness of the violation if probation were not revoked." The district court revoked Haley's probation and executed his 32-month sentence.

Haley appeals.

DECISION

I.

Haley contends that the district court abused its discretion by revoking his probation. "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). A district court "abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quotation omitted).

Before a district court revokes a defendant's probation, it must (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." *Austin*, 295 N.W.2d at 250. "[I]n making the three *Austin* findings, courts are not charged with merely conforming to procedural requirements; rather, courts must seek to convey their substantive reasons for revocation and the evidence

relied upon." *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005). We review de novo whether a district court made the required *Austin* findings. *Id.* at 605.

Haley's challenge is limited to the district court's finding on the third *Austin* factor: "whether the need for confinement outweighs the policies favoring probation." *Id.* at 606. When determining whether to revoke probation, the district court "must balance the probationer's interest in freedom and the state's interest in insuring his rehabilitation and the public safety." *Id.* at 606-07 (quotation omitted). The district court must bear in mind that "the purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed." *Id.* at 606 (quotation omitted).

In balancing the probationer's and the state's interests, a district court should consider (1) whether "confinement is necessary to protect the public from further criminal activity by the offender," (2) whether "the offender is in need of correctional treatment which can most effectively be provided if he is confined," or (3) whether "it would unduly depreciate the seriousness of the violation if probation were not revoked." *Id.* at 607 (quotation omitted). The existence of only one of those circumstances is sufficient to establish the need for confinement. *See id.* (using the disjunctive "or" in discussing the bases for revocation); *State v. Smith*, 994 N.W.2d 317, 320 (Minn. App. 2023) ("Only one *Modtland* subfactor is necessary to support revocation."), *rev. denied* (Minn. Sept. 27, 2023).

Haley argues that the record does not support the district court's finding that not revoking his probation would unduly depreciate the seriousness of the violation. For the reasons that follow, we disagree. First, a district court may consider a grant of a downward

dispositional departure when deciding whether to revoke probation. *See State v. Fleming*, 869 N.W.2d 319, 331 (Minn. App. 2015), *aff'd*, 883 N.W.2d 790 (Minn. 2016). Haley's underlying sentence was a dispositional departure, and it was not his first—Haley previously received a dispositional departure on a felony OFP violation. Second, as the district court reasoned, Haley's current probation violation and resulting conviction was consistent with his documented history of violating OFPs and HROs. Thus, Haley continued to commit the same type of offenses even though he had been granted two opportunities to avoid executed prison terms. And third, the district court reasonably rejected Haley's argument that he was benefitting from mental-health therapy and medications, noting that Haley had previously taken steps to address his mental health and yet continued his pattern of unlawful conduct. The district court explained:

> I just read that PSI and you were addressing your mental health at that time too. You were seeing a counselor once a week. It's not like this is something new to you, but what this [c]ourt sees is it's just another -- a new angle for you to avoid the consequence of your behavior.

In sum, the PSI in the underlying case indicates that Haley had six felony convictions at the time of sentencing. Yet, the district court gave him a *second* opportunity to avoid an executed prison sentence. Despite that opportunity—and previous opportunities to demonstrate law-abiding behavior through the use of probation supervision and services—Haley committed and was convicted of another crime: a felony HRO violation while on probation for felony domestic assault. This record supports the district court's finding that not revoking probation would unduly depreciate the seriousness

of Haley's violation. Thus the district court did not abuse its discretion by revoking Haley's probation.

II.

Haley contends that the district court abused its discretion by denying his motion for a sentence reduction at the probation-disposition hearing. He asks us to remand for imposition of a 24-month sentence.

Under Minn. R. Crim. P. 27.03, subd. 9, "[t]he court may modify a sentence during a stay of execution or imposition of sentence if the court does not increase the period of confinement." In *State v. Hockensmith*, the Minnesota Supreme Court stated that a district court has discretion to reduce a defendant's sentence when revoking a stay of execution.[1] 417 N.W.2d 630, 633 (Minn. 1988). "We review a district court's decision to deny a motion under rule 27.03 for an abuse of discretion." *State v. Provost*, 901 N.W.2d 199, 201 (Minn. App. 2017).

Haley asserts that the district court abused its discretion by refusing to reduce his 32-month sentence to 24 months, arguing a reduction was appropriate based on (1) his progress during two years of probation, (2) the fact that his domestic-assault conviction "would be a misdemeanor but for [his] prior convictions," (3) the fact that "[t]here was no significant bodily harm and the conduct involved grabbing the victim's wrist," and (4) the

[1] We note that in denying Haley's request for resentencing, the district court stated that it was "not aware of any law that permits the [c]ourt to resentence." But the record does not suggest that the district court denied Haley's request based on a mistaken belief that it did not have discretion to reduce his sentence. Instead, the record shows that the district court made a discretionary decision not to reduce Haley's sentence based on his extensive criminal record and its deference to the original sentencing decision.

fact that "the victim had supported a continuation of probation." Haley argues that a 32-month sentence "unfairly exaggerated the criminality of the conduct" and that a "24-month sentence would have been proportional to the offense severity and would have given consideration to [Haley's] subsequent progress on probation."

Although the *Hockensmith* court stated that a district court has discretion to reduce a lawful sentence when revoking probation and executing a sentence, nothing in that decision indicates that a district court is required to reduce a sentence. 417 N.W.2d at 631-33. In fact, the *Hockensmith* court indicated that appellate courts should not interfere with the district court's discretionary decision not to reduce a sentence, stating, "The [district] court's refusal to exercise its discretion in [the] defendant's favor was simply a discretionary sentencing decision of the sort that the court of appeals presumably would not have and should not have interfered with in any event." *Id.* at 633.

Haley does not provide any authority or argument persuading us that it is appropriate to interfere with the district court's sentencing discretion in this case. Nor do we discern any reason to do so.

Affirmed.