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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1233**

State of Minnesota,
Respondent,

vs.

Jackie Anne Durham,
Appellant.

**Filed March 25, 2013
Affirmed
Kalitowski, Judge**

Blue Earth County District Court
File No. 07-CR-09-2098

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

Ross E. Arneson, Blue Earth County Attorney, Mankato, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jennifer Lauermann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Worke, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Jackie Anne Durham contends that the district court abused its discretion when it revoked her probation. She argues that the district court erred by

finding that her violation was intentional and inexcusable and that the need for confinement outweighed the policies favoring probation. We affirm.

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). Prior to revoking an individual’s 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.” *Id.* at 250; *State v. Modtland*, 695 N.W.2d 602, 606 (Minn. 2005). Appellant challenges the district court’s findings regarding the second and third *Austin* factors.

Intentional or inexcusable violation

Appellant violated the terms of her probation by failing to complete the Blue Earth County Drug Court program, and the evidence supports the district court’s conclusion that the violation was intentional and inexcusable. The district court revoked appellant’s probation because she repeatedly violated the program’s rules—including missed urinalyses, missed treatment sessions, missed curfews, a diluted urinalysis, absconding from supervision, and missed required daily check-ins. As the district court stated, such repeated violations, accompanied by increasingly severe sanctions, are evidence that appellant “chose not to comply with the drug court rules and regulations.” Thus, the record demonstrates that appellant’s probation violation was intentional and inexcusable.

Need for confinement

“In some cases, policy considerations may require that probation not be revoked even though the facts may allow it.” *Austin*, 295 N.W.2d at 250. “The purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed.” *Id.* The district court must balance “the probationer’s interest in freedom and the state’s interest in insuring [her] rehabilitation and the public safety.” *Id.* When weighing these competing interests, district courts may consider 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 [she] is confined; or
- (iii) it would unduly depreciate the seriousness of the violation if probation were not revoked.

Id. at 251 (citing A.B.A. Standards for Criminal Justice, Probation § 5.1(a) (Approved Draft 1970)); *Modtland*, 695 N.W.2d at 607 (stating that these factors remain relevant). The district court must not react reflexively to an accumulation of technical violations, but rather must determine that the “offender’s behavior demonstrates that . . . she cannot be counted on to avoid antisocial activity.” *Austin*, 298 N.W.2d at 251 (quotations omitted).

The record indicates that appellant was given numerous opportunities for rehabilitation, including extensive out-patient chemical-dependency treatment, ongoing chemical testing, cognitive-skills development, a mental-health assessment, and mental-health services. But despite these opportunities, appellant did not comply with the

program requirements and ultimately was terminated for her numerous violations, many of which involved relapses. Therefore, appellant could not be counted on to avoid antisocial activity, and the record supports the district court's finding that the need for confinement outweighed the policies favoring probation.

Because the evidence supports the district court's findings that appellant's probation violation was intentional or inexcusable and the need for confinement outweighed the policies favoring probation, the district court did not abuse its discretion when it revoked appellant's probation.

Affirmed.