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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1438**

State of Minnesota,  
Respondent,

vs.

Curt Trevor Rolland,  
Appellant.

**Filed July 15, 2008  
Affirmed  
Collins, Judge\***

Scott County District Court  
File No. 70-CR-06-1571

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

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Considered and decided by Stoneburner, Presiding Judge; Worke, Judge; and Collins, Judge.

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

## UNPUBLISHED OPINION

**COLLINS**, Judge

Appellant challenges the revocation of his probation, arguing that the district court erred in finding that the need for confinement outweighs the policies favoring probation. We affirm.

### FACTS

This case arises out of appellant Curt Trevor Rolland's fifth conviction for driving while impaired (DWI). In June 2006, Rolland was convicted upon his plea of guilty of first-degree felony DWI, for which he received a stayed sentence of 48 months and probation. The conditions of probation included abstinence from alcohol and 365 days in jail. Given credit for time served, Rolland was released to satisfy the balance of the jail time on electronic home monitoring. In August 2006, after Rolland admitted using alcohol, the district court rescinded the electric home monitoring privilege and ordered Rolland to serve the remainder of the jail time in custody. In April 2007, following a contested hearing, the district court revoked Rolland's probation based on evidence that he had resumed the use of alcohol since his release from jail. This appeal followed.

### DECISION

When the district court revokes probation, we review the court's decision for an abuse of discretion. *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). Before revoking probation, the district court must (1) designate the specific condition of probation 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 here made each of the required *Austin* findings. But Rolland argues that the district court erred when it found that the need for confinement outweighs the policies favoring probation. We disagree.

In *State v. Modtland*, the supreme court indicated that district courts should exercise caution when finding that the need for confinement outweighs the policies favoring probation:

In making the third *Austin* finding, we emphasize that district courts must bear in mind that “policy considerations may require that probation not be revoked even though the facts may allow it” and that “[t]he purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed.” 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.”

695 N.W.2d 602, 606-07 (Minn. 2005) (citations omitted).

Here, the district court properly considered such factors before finding that the need for confinement outweighs the policies favoring probation. The district court earlier expressed dismay that Rolland was not ordered to attend treatment as an initial condition of probation, stating:

It’s inconceivable to me that somebody could plead guilty to an offense that could land them in prison for 48 months that’s alcohol related and we wouldn’t order them to go to treatment . . . it’s a lot easier to send a young man to prison if you’ve given them an opportunity for treatment, and I don’t mean asking them if they want to go . . . Even if it’s reduced to careless driving, an evaluation is mandatory . . . the [c]ourt may have set him up for failure.

At the disposition hearing, however, having reviewed the case records, the same judge observed:

Well, if I thought it was a slam dunk and you would finish treatment and never drink again, I wouldn't have anything to think about. But you told the evaluator the last time after five drunk driving [incidents] you don't have a drinking problem. That's why they recommended no use of alcohol and random testing. And then as far as I can tell, you drank everyday.

....

Well, I have to conclude that we gave you every opportunity . . . . And I wasn't too comfortable sending you to prison after the hearing the last time because I noticed that [the sentencing judge] didn't order you to go to treatment, but it's because of you she didn't order you to go to treatment. You made everybody look like a complete fool for at least a year before you got caught because you are out there boozing it up constantly. All the time when you are on probation having told us you didn't have a drinking problem, you just went out and continued to drink like a fish.

These comments reveal that the district court duly considered the policies in favor of probation. Although it is apparent that Rolland is in need of treatment, the record casts strong doubt upon his amenability to probation and the likelihood of his successful completion of treatment. On this record, the district court could reasonably conclude that it would be pointless to order Rolland to attend treatment. And it is clear that treatment was *available* to Rolland during his probation even though it was not required, and he did not avail himself of it.

While we recognize the personal and public-safety values of referring people in Rolland's situation to treatment for chemical dependency or abuse, Rolland has presented

no authority for his contention that the district court must in every case order the probationer convicted of an alcohol-related offense to obtain treatment before executing a stayed sentence. Supported by professional evaluation, the need for treatment and the amenability of the probationer can be properly assessed by the district court on an individual case basis. In each case, the district court is required to carefully consider whether the need for confinement outweighs the policies in favor of probation. *Id.* at 606. In this case, the record shows that the district court gave the matter careful consideration and that its decision was based on sound judgment, not mere will.

Thus, the district court did not err when it found that the need for confinement outweighs the policies favoring probation. Rolland has advanced no other basis for reversing the district court's decision. We therefore conclude that the district court did not abuse its discretion when it revoked Rolland's probation.

**Affirmed.**