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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2017**

State of Minnesota,
Appellant,

vs.

Kaley Marie Hennessy,
Respondent.

**Filed July 2, 2012
Affirmed
Wright, Judge**

Dakota County District Court
File No. 19HA-CR-10-3799

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

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Considered and decided by Wright, Presiding Judge; Ross, Judge; and Muehlberg,
Judge.*

* 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UNPUBLISHED OPINION

WRIGHT, Judge

Appellant State of Minnesota challenges the district court's decision to modify the duration of respondent's probationary incarceration, arguing that the district court's modification is unreasonable, inappropriate, and not warranted by the findings of fact. We affirm.

FACTS

In June 2011, respondent Kaley Marie Hennessy pleaded guilty to one count of stalking, Minn. Stat. § 609.749, subd. 4(b) (2010); seven counts of violating a restraining order, Minn. Stat. § 609.748, subd. 6(a) (2010); and two counts of unauthorized computer access, Minn. Stat. § 609.891, subd. 1 (2010). The complaint alleged that, from March 23, 2010, to October 11, 2010, Hennessy stalked and harassed J.B. and J.B.'s minor child B.B., in violation of a harassment restraining order to refrain from harassing or contacting J.B. and B.B., to stay away from J.B.'s residence and place of employment, and to refrain from impersonating J.B. or B.B. The complaint further alleged that Hennessy penetrated a computer security system and gained access to the personal data of J.B.'s mother-in-law and stalked J.B.'s sister.

At a hearing on August 11, 2011, the district court sentenced Hennessy to 81 months' imprisonment. Finding that Hennessy is amenable to probation, the district court stayed execution of the sentence and placed Hennessy on supervised probation for 40 years on conditions that include serving 365 days in the Dakota County Jail, continuing psychiatric treatment, refraining from direct and indirect contact with the victims and

their families, and paying restitution. The district court indicated that it would entertain a motion to reduce the duration of Hennessy's probationary custody term after Hennessy served 60 days in custody. Subsequently, the district court reduced Hennessy's sentence to 78 months' imprisonment to conform with the sentencing guidelines.

On August 19, 2011, the state asserted that Hennessy had violated the terms of her probation on August 12 by representing to a rental-car company that engages in regular business with the victims' family business that she was associated with the victims' family. At a probation-violation hearing, Hennessy admitted the allegations, and the district court ordered her to serve four days in jail as a sanction.

On October 12, 2011, Hennessy moved the district court to reduce the probationary jail term from 365 days to 60 days based on her good conduct while in custody since August 29, 2011. Hennessy argued that her incarceration caused her to lose medical insurance for herself and her daughter, strained their relationship, and prevented Hennessy from continuing her education and therapeutic treatment.

At a hearing on the motion, the state alleged that J.B., one of the victims of Hennessy's crimes, received electronic communications that appeared to be a continuation of Hennessy's stalking behavior. Hennessy's probation officer reported that Hennessy had visited her parents' residence while on a furlough for treatment rather than returning directly to the jail as directed. The state also presented evidence that an inmate reported that Hennessy bragged about "cyber-stalking" the victims during her unauthorized visit to her parents' residence. Although Hennessy admitted visiting her parents' residence while on furlough, she denied the state's other allegations.

On October 20, 2011, the district court reduced Hennessy's probationary incarceration period from 365 days to 90 days and ordered her released from custody on November 22, 2011. The district court explained that it had intended

to give strong consideration to an early release from jail after said 60 days, mainly due to the fact that [Hennessy] is a single mother with a young daughter. The Court likely would have granted the early release after 60 days had [Hennessy] not violated the rules of her medical furloughs by going home during the furlough(s) without permission. [Hennessy] must learn that there are consequences for the violation of rules. As a consequence for the current violation, [Hennessy] will . . . serve 30 more days before release.

The district court found that the state failed to prove that Hennessy "used the computer while at home during her furlough(s) to continue to cyber-stalk her victims." The district court warned: "If the State is ever able to prove this allegation, [Hennessy] should expect to have her sentence executed and to spend 78 months in state prison." The district court ordered all other terms and conditions of the sentence to remain in effect and prohibited Hennessy from going home or using the Internet during her furloughs. This appeal followed.

DECISION

As an initial matter, we observe that the state does not challenge the district court's imposition of a sentence of 78 months' imprisonment, its decision to stay execution of the sentence, or its order that Hennessy serve 365 days in jail as a condition of probation. The only issue presented on appeal is whether the district court abused its discretion by reducing the probationary jail term from 365 days to 90 days.

Under the Minnesota Rules of Criminal Procedure, a district court may “modify a sentence during a stay of execution or imposition of sentence if the [district] court does not increase the period of confinement.” Minn. R. Crim. P. 27.03, subd. 9. Such a modification is within the discretion of the district court. *State v. Hockensmith*, 417 N.W.2d 630, 633 (Minn. 1988). Because the district court “sits with a unique perspective on all stages of a case, including sentencing,” it is uniquely well-suited to evaluate an offender’s conduct and weigh its sentencing options. *State v. Hough*, 585 N.W.2d 393, 397 (Minn. 1998). On appeal, we will not reevaluate the district court’s sentencing decision if the district court soundly exercised its discretion and imposed a sentence that is authorized by law. *State v. Stutelberg*, 435 N.W.2d 632, 633-34 (Minn. App. 1989).

The district court may stay the execution of a sentence and “place the defendant on probation with or without supervision and on the terms the [district] court prescribes.” Minn. Stat. § 609.135, subd. 1(a)(2) (2010). Within its statutory authority to establish the terms of probation, the district court may require an offender “to serve up to one year incarceration in a county jail . . . or other local correctional facility” as a condition of probation. *Id.*, subd. 4 (2010). The determination of probation conditions, including probationary incarceration, rests within the district court’s broad discretion over sentencing matters. *State v. Friberg*, 435 N.W.2d 509, 515 (Minn. 1989); *State v. Sutherlin*, 341 N.W.2d 303, 305 (Minn. App. 1983). But the conditions of probation imposed by the district court must be reasonably related to the purposes of sentencing and probation without being unduly restrictive. *State v. Franklin*, 604 N.W.2d 79, 82 (Minn. 2000); *Friberg*, 435 N.W.2d at 515.

The purposes of sentencing are “to prevent future unlawful conduct by defendants and establish reasonable consequences for their unlawful conduct.” *Friberg*, 435 N.W.2d at 516. Similarly, among the penal objectives of probation are to deter further criminal conduct, punish the offender, rehabilitate the offender, and protect the public against continued criminal behavior. Minn. Stat. § 609.02, subd. 15 (2010); *State v. Haynes*, 423 N.W.2d 102, 104 (Minn. App. 1988); *see also* Minn. Sent. Guidelines III.A.2 (2011) (recognizing that penal objectives to be considered in establishing conditions of stayed sentences include retribution, rehabilitation, public protection, restitution, deterrence, and public condemnation of criminal conduct). Although the Minnesota Sentencing Guidelines do not establish specific guidelines on probationary conditions, the sentencing guidelines counsel that the “development of principled standards for establishing conditions of stayed sentences requires that judges first consider the objectives to be served by a stayed sentence and, second, consider the resources available to achieve those objectives.” Minn. Sent. Guidelines III.A.2. The sentencing guidelines advise the district court to use “the least restrictive conditions of stayed sentences that are consistent with the objectives of the sanction.” *Id.* The sentencing guidelines also encourage proportionality in the sanction imposed, the severity of the crime, and the defendant’s criminal history. *Id.*

Here, the district court crafted a sentence that addresses both the victims’ interests in being free from harassment and stalking and Hennessy’s rehabilitation. When it imposed the lengthy sentence, stayed its execution, and ordered 40 years of conditional probation, the district court explained that the purpose of doing so is to provide the

victims 40 years of protection. Indeed, the stayed prison sentence and lengthy probationary term create a long-term incentive for Hennessy to refrain from cyber-stalking the victims, while also facilitating Hennessy's rehabilitation.

The subsequent reduction of the probationary jail term is consistent with the objectives of the sentence. By modifying Hennessy's probationary jail term, the district court balanced the need to protect the victims and the need to punish Hennessy with probation conditions that facilitate Hennessy's rehabilitation. Indeed, the district court advised the parties at sentencing that it was willing to revisit the probationary jail condition after Hennessy was incarcerated for 60 days. The district court's rationale for reducing Hennessy's sentence reflects the rehabilitative purposes of probation fostered by the conditions of the stayed sentence.

The state argues that the district court abused its discretion by reducing the probationary jail term despite Hennessy's repeated probation violations. But the district court punished Hennessy with escalating sanctions for each violation. For violating the conditions of probation in August 2011, the district court sanctioned Hennessy with four days in custody. The district court punished Hennessy for violating the terms of her furlough by requiring her to spend 90 days in custody, rather than releasing her after 60 days. The district court also put Hennessy on notice that her probation would be revoked and her sentence executed if allegations that she engaged in cyber-stalking the victims while in jail were proved.

From our careful review of the record in a manner that is mindful of the district court's discretion in sentencing, we decline to disturb the district court's decision to reduce the custody component of Hennessy's probation.

Affirmed.