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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1606**

State of Minnesota,
Respondent,

vs.

C.J.D.B.,
Appellant.

**Filed March 11, 2013
Affirmed
Kirk, Judge**

Hennepin County District Court
File No. 27-JV-06-16503

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

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Hudson, Presiding Judge; Stoneburner, Judge; and
Kirk, Judge.

UNPUBLISHED OPINION

KIRK, Judge

Appellant argues that the district court abused its discretion when it revoked his extended jurisdiction juvenile (EJJ) probation and imposed the stayed adult sentence. Appellant contends the record failed to establish by clear and convincing evidence that the need for confinement outweighed the policies favoring probation. We affirm.

FACTS

In November 2006, the state charged appellant C.J.D.B., who was 15 at the time, with one count of attempted first-degree criminal sexual conduct and one count of second-degree assault, and moved to certify him as an adult. In December, the district court designated appellant EJJ. Pursuant to a plea agreement, appellant pleaded guilty to attempted first-degree criminal sexual conduct. The district court sentenced appellant to 72 months in prison, but stayed execution of the sentence and placed appellant on EJJ probation. The district court ordered appellant to: comply with the conditions of his EJJ probation; remain law abiding; attend school; abstain from using nonprescription, mood-altering substances; pay restitution; register as a sex offender; and complete the Hennepin County Home School Juvenile Sex Offender Program (JSOP). The district court dismissed the second count of the complaint.

After appellant's successful discharge from JSOP in March 2009, he was placed at Hearthstone Group Home. In August, appellant's probation officer filed an order for apprehension and detention (A & D) alleging that appellant violated the terms of his probation by absconding from his court-ordered placement at Hearthstone. Appellant

returned to Hearthstone a short time later and, as a result, the district court signed a disposition modification order imposing administrative sanctions. In September, appellant's probation officer filed another A & D that alleged that appellant assaulted a resident at Hearthstone.

On February 4, 2010, appellant's probation officer filed a notification of violation hearing alleging that appellant violated the terms of his probation on several occasions: (1) in August 2009, a police report stated that appellant was involved in the theft of three cell phones, but he was not cited; (2) on the same day, appellant absconded from Hearthstone; (3) in September, appellant assaulted another resident at Hearthstone; (4) in December, appellant damaged property at Hearthstone; (5) in the same month, appellant stole a bottle of cologne from a drug store; (6) in June, appellant tested positive for marijuana and cocaine; and (7) in January 2010, he tested positive for marijuana. Appellant appeared before the district court for a probation violation hearing, admitted the violations from the February 4 notification, and agreed to a disposition modification. The district court placed appellant at the Mapletree Group Home; he was later successfully discharged.

In February 2011, appellant signed an updated EJJ probation contract with a new probation officer and agreed to reside at The Bridge for Youth Transitional Living Program. In July, appellant's probation officer filed an A & D alleging that appellant violated the terms of his probation by absconding from his court-ordered placement at The Bridge. The district court ordered appellant to complete 30 days of electronic home

monitoring (EHM) at The Bridge. In August, due to EHM violations, the district court ordered appellant to restart the 30 days of EHM.

In September, appellant appeared before the district court and admitted violating his probation by losing his placement at The Bridge. The district court ordered him to: successfully complete the program at 180 Degrees, including the Return to Success Transition Program and seven days of EHM; participate in aftercare services; provide random urinalyses; and obtain employment. On October 17, appellant's probation officer filed an A & D alleging that appellant violated the terms of his probation by absconding from his court-ordered placement at 180 Degrees and possessing synthetic cannabis and paraphernalia.

In February 2012, the state charged appellant in adult court with second-degree burglary, receiving stolen property, and failure to register as a sex offender. On April 18, appellant's probation officer filed an A & D alleging that appellant: absconded from court-ordered placement at 180 Degrees; tested positive for synthetic cannabis; failed to maintain contact with probation; and received three felony charges in adult court.

Appellant appeared before the district court for a probation-revocation hearing and admitted facts corresponding to those alleged in the April 18 A & D, but requested that the district court not revoke his EJJ probation. At the time, appellant was 20 years old and his 21st birthday was approximately three months away. At the conclusion of the probation-violation hearing, the district court stated:

I'm going to find that you did violate probation. And the conditions of that probation were that you absconded from placement. You tested positive for [synthetic cannabis].

You've had no contact with probation since October 14. You picked up two new felonies supported by probable cause, the burglary/receiving stolen property. And the failure to register as a sex offender. That these violations were inexcusable or intentional. And I do find that the need for confinement does outweigh the policies favoring probation.

The district court observed that appellant's charges in adult court were serious felonies, that appellant had not been successful on EJJ probation despite several warnings, and that he had had "six or seven last chances." As a result, the district court stated that "by doing anything other than sending [appellant] to prison, [the court] would unduly depreciate the seriousness of the violations."

The district court found that appellant admitted violating the terms of his EJJ probation by admitting specific facts that correspond with the allegations contained in the October 17 and April 18 A & Ds, and that "[b]ased upon the original offense, the terms of probation, and [appellant's] intervening conduct, and [appellant's] admission to the alleged probation violations . . . the violations occurred and were intentional or inexcusable." The district court found that while appellant had some success on EJJ probation, he also had seven probation violations, continued to use mind-altering substances, and committed several recent, serious violations. The district court concluded that "the need for confinement outweighs the policies favoring probation as [appellant] has demonstrated that he is not amenable to probation and there [are] only two and a half months left of juvenile jurisdiction on EJJ probation." The district court revoked appellant's EJJ probation and committed him to the commissioner of corrections for 72 months. This appeal follows.

DECISION

A district court has broad discretion in deciding whether to revoke probation and this court will not reverse that determination unless the district court abused its discretion. *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). When determining whether to revoke EJJ probation, the district court must apply a three-step analysis: (1) identify “the specific condition or conditions that were violated”; (2) determine that “the violation was intentional or inexcusable”; and (3) find that the “need for confinement outweighs the policies favoring probation.” *Id.* at 250; *see State v. B.Y.*, 659 N.W.2d 763, 768-69 (Minn. 2003) (concluding that the district court must consider the three *Austin* factors before revoking EJJ probation). The district court may revoke EJJ probation if it finds by “clear and convincing evidence that any provisions of the disposition order were violated, or if the probationer admits the violation.” Minn. R. Juv. Delinq. P. 19.11, subd. 3(C)(1). If the district court determines “that reasons exist to revoke the stay,” it must execute the previously imposed sentence unless it finds that mitigating factors justify continuing the stay. Minn. Stat. § 260B.130, subd. 5(c) (2012).

It is undisputed that appellant violated several conditions of his EJJ probation and that the violations were intentional. As a result, the only issue is whether the district court abused its discretion in applying the third *Austin* factor. Appellant contends that there was not clear and convincing evidence to support the district court’s conclusion that the need for his confinement outweighed the policies favoring probation. He argues that the district court failed to consider that he spent several years in institutions due to being homeless or acknowledge that he had some success on EJJ probation.

In considering the third *Austin* factor, “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 the purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed.” *State v. Modtland*, 695 N.W.2d 602, 606 (Minn. 2005) (quotation omitted). In determining whether to revoke probation, a district court should consider whether: (1) “confinement is necessary to protect the public from further criminal activity by the offender”; (2) the offender needs “correctional treatment which can most effectively be provided if he is confined”; or (3) “it would unduly depreciate the seriousness of the violation if probation were not revoked.” *Id.* at 607 (quotation omitted).

The district court carefully weighed the need for confinement and the policies favoring probation, and explained its reasons for concluding that the need for appellant’s confinement outweighed the policies favoring probation. The district court found that appellant violated his probation numerous times, that the new offenses he was charged with are very serious, and that it would unduly depreciate the seriousness of the violations if the court did not revoke appellant’s probation. These findings are supported by the record and satisfy the third *Austin* factor.

Further, contrary to appellant’s argument, the district court specifically acknowledged that appellant successfully completed some aspects of his EJJ probation, stating that he “has had some successes at some residential placements in the beginning of his probation and has maintained employment at times during his time on probation.” Appellant appears to argue that he was “successful” on EJJ probation because he was not

charged with another sex offense. While it is true that he has not been charged with a new sex offense, the district court revoked appellant's probation based on his new offenses and his violation of several other requirements of his EJJ probation. *See* Minn. Stat. § 260B.130, subd. 5(a) (stating that the district court may revoke EJJ probation if it finds that the probationer violated the terms of his probation or is alleged to have committed a new offense).

Because the record contains clear and convincing evidence to support the district court's conclusion that the need for appellant's confinement outweighs the policies favoring probation, the district court did not abuse its discretion by revoking appellant's EJJ probation and executing his adult prison sentence.

Affirmed.