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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1428**

Cicero Deshawn Taylor, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 5, 2014
Affirmed
Ross, Judge**

Ramsey County District Court
File No. 62-JV-09-2798

Cathryn Middlebrook, Chief Appellate Public Defender, Michael W. Kunkel, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

John J. Choi, Ramsey County Attorney, Kaarin Long, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Hooten, Judge; and Randall,
Judge. *

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

UNPUBLISHED OPINION

ROSS, Judge

Sixteen-year-old Cicero Taylor robbed a peer at gunpoint, was assigned to Extended Juvenile Jurisdiction probation, and violated the conditions of his probation at least 112 times over the next three years. The district court revoked his probation. Now serving his 56-month prison sentence, Taylor unsuccessfully petitioned the district court for postconviction relief. Because the district court did not abuse its discretion by rejecting Taylor's petition based on the previous finding that the violations were intentional and that the need for confinement outweighed the benefits of probation, we affirm.

FACTS

Cicero Taylor, then sixteen, robbed a peer at gunpoint in July 2009. The state charged Taylor with first-degree aggravated robbery. Because he committed the offense with a firearm, a conviction presumptively carried an adult sentence. *See* Minn. Stat. § 260B.125, subd. 3 (2008). Taylor pleaded guilty in August. The district court sentenced him to a stayed 56-month adult prison sentence, classifying him as an Extended Jurisdiction Juvenile (EJJ) and subjecting the stay to specific conditions. It ordered Taylor to comply with all directives of the probation office and to complete a rehabilitative program at MCF Red Wing.

Between August 2009 and September 2010, Taylor violated Red Wing's rules 87 times. After a revocation hearing in December 2010, the district court concluded that Taylor violated his probation intentionally. The district court did not revoke probation,

however, finding that the benefits of probation outweighed the need to confine Taylor in adult prison.

Taylor violated Red Wing's rules at least another 25 times after returning. Probation officer Chris Montbriand filed a probation violation with the district court in May 2011. The district court held an EJJ probation-revocation hearing in June. Jeff Swiggum, Taylor's Red Wing caseworker, testified that Taylor disrupted other Red Wing residents and impeded their treatment. He opined that there was nothing Red Wing could do for Taylor because he refused Red Wing's rehabilitation services. Montbriand corroborated Swiggum's testimony, detailing Taylor's violations. Taylor did not present evidence. The district court found that Taylor intentionally violated probation. It also found that the need to confine Taylor outweighed the policies favoring his continued EJJ status. It based its decision on Taylor's decision not to participate in the rehabilitative process and found Taylor unamenable to treatment. It also found that Taylor's actions were harmful to the other residents at Red Wing. It executed Taylor's stayed sentence, crediting him for the days he spent at Red Wing.

Taylor filed a postconviction relief petition about a year and a half later, in February 2013. He did not request an evidentiary hearing, relying on the record. The district court denied his petition. Taylor appeals.

DECISION

Taylor contends that the district court erred by denying postconviction relief. We will not disturb the postconviction court's decision unless it abused its discretion. *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). We reverse a district court's postconviction

findings of fact only if they are not supported by sufficient evidence, and we review legal determinations de novo. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). Taylor challenges the postconviction court's decision to affirm the revocation of his EJJ status.

Before revoking probation, a district court must indicate which condition was violated, find the violation to be intentional or inexcusable, and find that the need for confinement outweighs the policies favoring probation. *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). These same requirements apply when the state seeks to revoke EJJ probation. Minn. R. Juv. Delinq. P. 19.11, subd. 3(C)(2), (3); *State v. B.Y.*, 659 N.W.2d 763, 768–69 (Minn. 2003). District courts have broad discretion to revoke probation, and postconviction courts review probation-revocation decisions for abuse of discretion. *State v. Osborne*, 732 N.W.2d 249, 253 (Minn. 2007). Taylor challenges only the postconviction court's affirmance of the district court's prior conclusion that the need for confinement outweighed the policies favoring his EJJ probation. He does not dispute that he intentionally violated probation conditions.

The purpose of an EJJ designation is to rehabilitate a juvenile. *State v. Garcia*, 683 N.W.2d 294, 300 (Minn. 2004). District courts may revoke EJJ status only after treatment has failed. *See State v. Modtland*, 695 N.W.2d 602, 606 (Minn. 2005). Revocation is appropriate if the state can show

on the basis of the original offense and the intervening conduct . . . that: (i) confinement is necessary to protect the public from further criminal activity . . . ; *or* (ii) the offender is in need of correctional treatment which can most effectively be provided if he is confined; *or* (iii) it would unduly depreciate the seriousness of the violation if probation were not revoked.

Austin, 295 N.W.2d at 251 (emphasis added) (quotation omitted). A finding of any of these three alternatives is sufficient. *Id.*

Taylor argues that his incarceration was not necessary to protect the public from further criminal activity. Specifically, he contends that because the EJJ status, which would expire in July 2014, would last longer than his criminal sentence, which would expire in March 2014, the public would benefit by maintaining him under EJJ status. This argument ignores the fact that other residents of Red Wing are among the “public” to which *Austin* refers. Taylor was disruptive to the juvenile residents of Red Wing with no due regard for their treatment and rehabilitation. His argument fails.

Taylor’s date-based argument also defies logic. Taken to its conclusion, the argument implies that when a person is confined out of the home under EJJ probation and his adult sentence would expire before his twenty-first birthday, the district court could not revoke the probationary EJJ status. This renders the statutory scheme useless, since one motivating factor under the EJJ arrangement is “the threat of adult sanctions” if a person reoffends. *Garcia*, 683 N.W.2d at 300 (quotation omitted). Taylor’s argument contradicts that motivating factor.

Because the district court acted within its discretion by rejecting Taylor’s postconviction petition, we need not address Taylor’s additional arguments on the alternative revocation bases.

Affirmed.