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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-0680**

State of Minnesota,  
Respondent,

vs.

Jerry Delaney,  
Appellant.

**Filed November 25, 2013  
Reversed and remanded  
Stoneburner, Judge**

Ramsey County District Court  
File No. 62CR098660

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney,  
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Interim Appellate Public Defender, Veronica M. Surges, Assistant  
Appellate Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Rodenberg, Judge; and  
Hooten, Judge.

**UNPUBLISHED OPINION**

**STONEBURNER**, Judge

Appellant challenges revocation of probation and execution of his previously  
stayed sentence, arguing that the district court denied him his due-process right to testify

on his own behalf at the revocation hearing and failed to make the required findings to support revocation. Even though appellant never requested that he be allowed to *testify* at the hearing, at which he admitted the probation violations alleged, we conclude that the district court denied appellant's right to due process by failing to elicit any information from appellant about the alleged violations and by precluding him from making any statement about the appropriate disposition. We remand for rehearing at which appellant shall be allowed a reasonable opportunity to personally address the district court regarding the alleged violations and the disposition.

### **FACTS**

At the beginning of appellant Jerry Delaney's appearance on three alleged probation violations, the following colloquy occurred:

[DEFENSE COUNSEL]: Your Honor. It's my understanding that [Delaney] will admit the allegations but would like to add some additional comments related to them.

[There followed a discussion between the district court and a spectator in the courtroom after which defense counsel continued speaking to the district court]

So he admits, Your Honor, but we would like to add some additional comments.

THE COURT: All right. Is that correct, Mr. Delaney?

[APPELLANT]: Yes

THE COURT: All right.

After this exchange, appellant's probation officer addressed the district court, explaining the alleged probation violations. The prosecutor then addressed the district

court, joining in the probation officer's recommendation to execute appellant's previously stayed 36-month sentence. Defense counsel then briefly addressed the district court, explaining that a change in probation officers had resulted in difficulties for appellant and stating that appellant is now willing to follow the conditions of probation as enforced by the new probation agent, has possible full-time employment, and has paid for, and plans to attend, a barber school.

The district court then spoke at some length, stating that (1) the district court had misgivings at the time it accepted the plea agreement that resulted in a downward dispositional departure of a stayed sentence; (2) the district court was surprised that a prior violation had not resulted in execution of the sentence; (3) the district court was sure that it had told appellant at sentencing that the district court usually gives a person only one chance when there is a departure; and (4) appellant is not amenable to probation supervision, the policies favoring confinement outweigh any benefit to having appellant remain in the community, and appellant is a public-safety risk when he is in the community. The district court revoked probation and executed appellant's sentence.

At that point, the following colloquy occurred:

[APPELLANT]: Your Honor, a lot of that stuff is . . . false. I've been complying with him. I've been coming to every one of my meetings. I call him.

THE COURT: [Appellant], I've heard it; I've heard it. Please step back.

[APPELLANT]: Is she serious?

THE COURT: If you don't want to be held in contempt you should just step back and not say another word. Otherwise, I can add more time to what I've given you.

Appellant was then removed from the courtroom. This appeal followed.

## DECISION

Appellant has framed the issues on appeal as denial of his right to due process, specifically of his right to testify on his own behalf, and a challenge to the adequacy of the district court's findings to support revocation of probation and execution of sentence. Appellant does not dispute that he admitted the alleged probation violations, provided that he could address the court to provide additional information about the alleged violations.<sup>1</sup> And appellant acknowledges that his attorney spoke on his behalf, giving some explanation for one of the violations and arguing that probation should not be revoked.

Appellant asserts, however, that by not giving him any opportunity to address the court prior to disposition, he had no opportunity to show that his violations were unintentional or excusable. And he argues that because he was not permitted to testify about why he should be allowed to remain in the community, there is insufficient evidence in the record to support the district court's finding that the need for confinement outweighs policies favoring probation. We disagree.

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<sup>1</sup> We nonetheless caution that a blanket admission entered by counsel with no factual basis established by a defendant could invite a challenge to the sufficiency of the record to establish that there is clear and convincing evidence of a violation as required by Minn. R. Crim. P. 27.04, subd. 3(1) (requiring that revocation hearings must be conducted consistent with the rights outlined in subd. 2(1)(c)a-e, one of which is that the district court must determine whether clear and convincing evidence of a probation violation exists and whether probation should be revoked).

The record reflects that appellant's request to address the district court on the violations was not a request that appellant be allowed to testify or even that he be allowed to personally address the district court. Appellant's counsel provided some explanation about how a change in probation agents has resulted in a change in the handling of appointment attendance and asserted that appellant is now willing to follow the rules of the current probation agent. Counsel also stated why appellant believes that he should be allowed to remain in the community, noting his willingness to work with the new probation officer, his employment possibility, and his education plans. On this record, we cannot conclude that the failure to allow appellant to *testify* deprived the district court of the ability to make the findings required to support probation revocation.

But appellant's due-process claim goes beyond the right to testify and encompasses a right to address the district court before probation was revoked and his sentence was executed. Minn. R. Crim. P. 27.03, subd. 3(C), mandates that before a sentence is imposed after a conviction, the district court must afford the defendant an opportunity to make a statement to the district court. And the supreme court has rejected arguments that the right of allocution at sentencing is discretionary with the district court or is waived by a defendant's failure to request it. *State v. Hanson*, 304 Minn. 415, 416, 231 N.W.2d 104, 105 (1975).

Although there is no similar mandatory allocution requirement in the rules of criminal procedure for execution of a stayed sentence at a probation-revocation hearing, the record in this case is troubling. Appellant was afforded only the opportunity to affirm counsel's statement that he intended to admit the violations if he could add some

information. Before his sentence was executed, no one questioned appellant about each alleged violation or attempted to elicit a factual basis for his admissions or any explanation of his conduct, and appellant was not given any opportunity to personally address the appropriate disposition. Appellant's attempt to present additional information after his sentence was executed was met with a threat of contempt.<sup>2</sup>

Under the unique circumstances of this case, we conclude that the district court's failure to give appellant any reasonable opportunity to personally address the district court about the violations and disposition violated appellant's due-process rights. We conclude that appellant is entitled to reversal, and we remand for a rehearing on the violations at which appellant shall be given a reasonable opportunity to personally speak about the violations and the appropriate disposition before disposition is imposed.

Because we are reversing and remanding, we do not address further appellant's challenge to the adequacy of the district court's findings to support revocation, except to reiterate the well-established rule that the district court must plainly articulate the findings required by *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980).

**Reversed and remanded.**

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<sup>2</sup> We do not ignore the implication in the record that the district court's threat of contempt may have related to appellant apparently having inappropriately approached the bench, but that conduct could have been dealt with separately from allowing appellant an opportunity to say more than "yes" in a hearing that resulted in execution of a 36-month sentence.