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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0858**

State of Minnesota,
Respondent,

vs.

Reginald Marlon King,
Appellant.

**Filed March 17, 2014
Affirmed
Stoneburner, Judge**

Hennepin County District Court
File No. 27CR121633

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

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, F. Richard Gallo, Jr., Assistant
Appellate Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Schellhas, Judge; and
Toussaint, Judge.*

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

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges the revocation of his probation, arguing that (1) the condition of his probation that he not have contact with the mother of his child violated his constitutional parenting rights such that he cannot be found in violation of that condition and (2) because he was not charged with or convicted of a new crime, he cannot be found to have violated the condition that he remain law abiding. We affirm.

FACTS

In a negotiated plea agreement, appellant Reginald Marlon King pleaded guilty to one count of first-degree burglary, Minn. Stat. § 609.582, subd. 1(b) (2010). In exchange, a charge of felony domestic abuse against the mother of his child, G.S., was dismissed. King was sentenced to 88 months in prison, stayed for three years with conditions that included remaining law-abiding and having no contact with G.S. other than through third parties for the purpose of visitation. King did not object to the no-contact order when it was imposed. The sentence represents a downward-dispositional departure from the sentencing guidelines.

Two months after he was sentenced, King was before the district court for a probation-violation hearing on allegations that he had given a false name to a police officer, in violation of the probation condition that he remain law-abiding, and that he had contact with G.S. in violation of the no-contact order. A Brooklyn Park police officer testified that he made a traffic stop of a vehicle driven by G.S.; King was a passenger in the back seat; and King gave the officer a false name.

King's probation officer testified that she had been supervising King for more than a year before his current sentence because he was on probation for a drug offense. She testified that King is not amenable to probation and recommended that his sentence be executed. King argued that his probation violations were not violent. He did not contest the legality of his probation conditions, but testified that the limited number of permissible third-party contacts made visitation with his child unduly complicated.

The district court found that King intentionally committed both alleged probation violations and that the "public policy favoring probation is outweighed by the policies favoring prison." The district court noted that King had contact with G.S. within five days of sentencing; had announced his intention to continue to have contact with her; and had lied to police. The district court found King unamenable to probation and executed his sentence. This appeal followed.

D E C I S I O N

For the first time on appeal, King challenges the constitutionality of the no-contact order. The state argues that failure to raise this issue in the district court waives that issue on appeal. We agree. *See State v. Spanyard*, 358 N.W.2d 125, 127 (Minn. App. 1984) (holding that issue not raised at revocation hearing is waived). Even if we were to reach the issue, however, King's allegation that the no-contact order imposed violated his constitutionally protected parental rights is without merit. The record reflects that the district court specifically allowed third-party contact to facilitate King's exercise of parenting rights. The district court acted within its broad discretion in determining appropriate conditions of King's probation. *State v. Friberg*, 435 N.W.2d 509, 515-16

(Minn. 1989) (stating that district courts have discretion in fashioning conditions of probation so long as they are “reasonably related to the purposes of sentencing and must not be unduly restrictive of the probationer’s liberty or autonomy.”). The record reflects that King represents a danger to G.S., and the no-contact order relates to public safety.

Similarly without merit is King’s contention that a violation of the condition that he remain law-abiding cannot be established unless he is charged with or convicted of a new crime. *State v. Phabsomphou*, 530 N.W.2d 876, 878 (Minn. App. 1995) (stating that the rules of criminal procedure leave the district court with discretion to decide whether to postpone a revocation hearing until after conviction or acquittal on new charges), *review denied* (Minn. June 29, 1995); *see Spanyard*, 358 N.W.2d at 127 (finding “little merit” in Spanyard’s claim that revocation hearing for failing to remain law-abiding should not have been held unless she was criminally charged with taking property without permission). In *Spanyard*, the undisputed testimony established that Spanyard removed the property of another without permission. *Spanyard*, 358 N.W.2d at 126-27. Likewise, in this case, the record contains undisputed evidence that King gave a false name to a police officer.

Affirmed.