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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1720**

In the Matter of the Welfare of:
C. A. H., Child.

**Filed August 19, 2008
Affirmed
Hudson, Judge**

Sherburne County District Court
File No. J7-06-50284

Lori Swanson, Attorney General, Peter Marker, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101; and

Kathleen A. Heaney, Sherburne County Attorney, Arden Fritz, Assistant County Attorney, Government Center, 13880 Highway 10, Elk River, Minnesota 55330 (for respondent state)

Lawrence Hammerling, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, Minnesota 55104 (for appellant C. A. H.)

Considered and decided by Schellhas, Presiding Judge; Shumaker, Judge; and Hudson, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Appellant juvenile challenges the district court's revocation of its stay of adjudication after he violated conditions of probation, arguing that he presented

mitigating factors justifying continuation of the stay. Because the district court did not abuse its discretion by revoking the stay, we affirm.

FACTS

In September 2006, 17-year-old appellant C.A.H. pleaded guilty to one count of second-degree criminal sexual conduct arising from sexual contact with a child under 13 years old and more than 36 months younger than appellant. *See* Minn. Stat. § 609.343, subd. 1(a) (2004). At a March 2007 predisposition hearing, the state and appellant's probation agent supported a stay of adjudication based on appellant's current success in treatment and admitting responsibility for his actions. The district court ordered a stay of adjudication until appellant's 19th birthday, placing him on probation with conditions, including successful completion of the CORE Professional Services outpatient sex-offender treatment program and 80 hours of community-service work.

The next month, appellant's probation agent filed a probation-violation report alleging that appellant had failed to meet CORE program attendance requirements, resulting in his termination from that program. At a contested probation-revocation hearing, appellant argued that he missed program sessions because he had car trouble, and that his violations were not intentional. The district court continued the stay, stating that "at this point I'm not prepared to condemn [appellant] to a life of a permanent designation [as a sex offender] but I will only not cross that line so many times." The court continued the original probation conditions and also ordered that appellant (1) serve a weekend at the Minnesota Regional Juvenile Center at Lino Lakes, (2) serve 120 hours

of adult community-service work, and (3) participate in any accelerated treatment programs or therapy necessary to maximize his benefit from the CORE program.

In July 2007, another probation-violation report was filed, alleging that appellant had again been terminated from the CORE program for lack of attendance and had presented his probation agent with forged community-work service verification slips. At an August 2007 contested revocation hearing, the probation agent testified that appellant had told her he was “making minimum progress [in the CORE program] because he was focusing fully on his community work service obligations” and presented her with a document showing the completion of some community-service work. But after the agent was unable to verify appellant’s attendance, he admitted he had forged the document. The agent recommended appellant’s incarceration because he was “continuing to display deceptive behavior in the community,” appeared “unmotivated to continue [the] rehabilitation process,” was “technically an untreated sex offender,” and because placing him in a secure facility would serve the public interest.

Appellant admitted at the hearing that he had been terminated twice from the CORE program because of absences, but he testified that he did not complete the program because he “couldn’t find anything in [him]self in order to go” and “didn’t feel like anything [he] would have done would have made a difference.” He testified that he had denied suicidal thoughts in a 2005 mental-health assessment, but he actually had those thoughts and did not disclose them. He testified that he would like a mental-health assessment and would take recommended medication.

The district court found that intentional and inexcusable probation violations had been established, appellant had refused to comply with treatment options, and appellant “remain[ed] on the verge of his 19[th] birthday as an untreated sex offender.” The court found that appellant’s emotional state, his “blatant” avoidance of treatment, his level of deceit in forging the community-service document, and his status as an untreated sex offender raised “tremendous concern . . . over public safety.” The court adjudicated appellant delinquent, with probation until his 19th birthday, and ordered him to register as a sex offender. This appeal follows.

DECISION

The district court “has broad discretion in determining whether to continue an adjudication in a delinquency proceeding.” *In re Welfare of J.L.Y.*, 596 N.W.2d 692, 695 (Minn. App. 1999). The district court “may” continue adjudication “[w]hen it is in the best interests of the child . . . and when the child has admitted the allegations contained in the petition.” Minn. Stat. § 260B.198, subd. 7 (2006). When determining whether to continue an adjudication, the district court may also consider the protection of the public. *In re Welfare of J.R.Z.*, 648 N.W.2d 241, 246 (Minn. App. 2002); Minn. R. Juv. Delinq. P. 15.05, subd. 4(A).

“[A]djudication after initially granting a continuance without adjudication is a probation revocation proceeding governed by Minn. R. Juv. [Delinq.] P. 15.07.” *In re Welfare of J.S.H.-G.*, 645 N.W.2d 500, 504 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002); *see also* Minn. R. Juv. Delinq. P. 15.05, subd. 4(E). The district court may revoke a stay of adjudication based on clear and convincing evidence or the child’s

admission of a violation of the conditions of probation. Minn. R. Juv. Delinq. P. 15.07, subd. 4(D). At a revocation hearing, the juvenile has the right “to present mitigating circumstances or other reasons why [a probation] violation, if proved, should not result in revocation.” *Id.*, subd. 4(A); *see also In re Welfare of R.V.*, 702 N.W.2d 294, 303 (Minn. App. 2005). Imposing adjudication within the limits prescribed by the legislature is not an abuse of discretion. *J.R.Z.*, 648 N.W.2d at 246–47.

At the August 2007 revocation hearing, appellant did not contest the probation agent’s report that he had violated the terms and conditions of probation. Rather, he presented evidence relating to mitigating factors, and he now argues that the violation should not have resulted in revocation because of those mitigating factors. Specifically, appellant argues that the district court abused its discretion by not continuing the stay of adjudication because he graduated from school with high grades, did not reoffend, was working, and was found to be a low risk for reoffending. He contends that his acts of missing some treatment sessions and community-service-work obligations resulted from his immaturity, shame over committing the offense, and undiagnosed depression. He testified that he would like to have a psychological evaluation “to sort out my psychological problems and get help,” and he introduced a note from his school counselor stating that she had observed appellant’s comments indicating suicidal thoughts on a website. His mother testified that she believed individual therapy would be more effective than group therapy for appellant.

But the record shows that in a 2005 adolescent-sex-offender assessment, appellant showed no symptoms of depression and “no indication of serious psychological distress.”

In a March 2007 dispositional-investigation report, appellant denied feelings of depression or suicidal thoughts, and appellant's probation agent testified that appellant never told her about any such thoughts. The CORE program contains components of both individual and group therapy. And appellant reported to his probation agent that he did not consistently attend the CORE program because "he was doing community work and he was busy." Further, we note that appellant never requested an evaluation under Minn. R. Juv. Delinq. P. 20.01 or 20.02 to pursue competency proceedings or to raise a mental-illness defense.

Appellant also argues that his failure to abide by the conditions of the stay "did not obviate the significant reasons for which the stay was granted," including that he was a low risk to reoffend because of family support, ability to rehabilitate himself, and intelligence. Appellant maintains that his graduation from high school with good grades and without disciplinary problems should be considered as a mitigating factor. He also points out that the requirement that he register as a sex offender will make future employment difficult.

But at the revocation hearing, the district court stated its concern that appellant "actively lied" about attending his community-service-work obligation by forging documents, which "implies [a] high level of deceit and manipulation." And the court found that this behavior related to appellant's "blatantly avoiding [sex-offender] treatment which raises tremendous concern . . . over public safety and the risk to other children in the community that he may have contact with[]." Thus, the district court appropriately considered the risk to public safety as a factor in determining whether to

order a continued stay of adjudication. Finally, the court noted that, if appellant in the future was successful in treatment, he could seek expungement of his record. The court did not abuse its discretion in revoking the stay.

Affirmed.