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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0883**

State of Minnesota,  
Respondent,

vs.

Robert Lee Bachmeier,  
Appellant.

**Filed February 19, 2013  
Affirmed  
Bjorkman, Judge**

Polk County District Court  
File No. 60-CR-07-2274

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

Gregory Widseth, Polk County Attorney, Andrew W. Johnson, Assistant County  
Attorney, Crookston, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, F. Richard Gallo, Jr., Assistant  
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Presiding Judge; Peterson, Judge; and  
Bjorkman, Judge.

## UNPUBLISHED OPINION

**BJORKMAN**, Judge

Appellant challenges the revocation of his probation, arguing that (1) his probation violations were not intentional and inexcusable and (2) the need for confinement does not outweigh the policies favoring probation. We affirm.

### FACTS

On July 25, 2007, appellant Robert Bachmeier was charged in Polk County with felony domestic assault and gross-misdemeanor interference with an emergency call in connection with an incident involving his wife. Bachmeier entered an *Alford* plea<sup>1</sup> to the domestic-assault charge in exchange for dismissal of the other charge. The district court granted Bachmeier a downward dispositional departure, staying his 28-month sentence and placing him on five years of supervised probation.

Bachmeier has repeatedly violated the conditions of his probation. In June 2009, he failed to complete a domestic-abuse and anger-management program. In August 2011, he used marijuana and committed driving offenses. Bachmeier admitted the violations, and the district court reinstated his probation on both occasions.

Bachmeier's noncompliance with his probation conditions continued. On August 30, 2011, Bachmeier again tested positive for marijuana. He failed to attend an appointment with his probation officer, Tami Jo Lieberg, on October 11. On December 2, Bachmeier contacted Lieberg by phone and scheduled an appointment with her for

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<sup>1</sup> An *Alford* plea allows a defendant to plead guilty while maintaining his or her innocence because the record contains sufficient evidence to support a conviction. *See State v. Goulette*, 258 N.W.2d 758, 760 (Minn. 1977).

December 19. During the call, Lieberg informed Bachmeier that he must complete a urinalysis (UA). Bachmeier explained that both the in-person appointment and UA were inconvenient because he was out of town visiting family members over the holidays. Lieberg attempted to schedule a meeting between Bachmeier and another probation officer and arrange a UA in the area that Bachmeier was visiting, but Bachmeier was not cooperative.

Lieberg filed a report with the district court, asserting Bachmeier violated his probation conditions by using mood-altering chemicals, failing to keep appointments and be truthful with Lieberg, and not completing a requested UA. After the report was filed, Bachmeier tested positive for marijuana on January 3, January 30, and February 17, 2012.

Bachmeier admitted the violations. Following a dispositional hearing, the district court revoked Bachmeier's probation and executed his prison sentence, finding that (1) he violated the conditions of his probation; (2) the violations were intentional, knowing, and inexcusable; and (3) the need for confinement outweighs the policies favoring probation. This appeal follows.

## **D E C I S I O N**

A district court has broad discretion to determine whether there is sufficient evidence to revoke probation and will not be reversed absent a clear abuse of that discretion. *State v. Osborne*, 732 N.W.2d 249, 253 (Minn. 2007). To revoke an offender's probation, the district court must find (1) a specific condition was violated, (2) the violation was intentional or inexcusable, and (3) the need for confinement

outweighs the policies favoring probation. *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). Revoking probation “cannot be a reflexive reaction to an accumulation of technical violations but requires a showing that the offender’s behavior demonstrates that he or she cannot be counted on to avoid antisocial activity.” *Id.* at 251 (quotation omitted). The district court should only revoke probation “as a last resort when treatment has failed.” *Id.* at 250.

**I. The district court did not abuse its discretion by finding that Bachmeier intentionally and inexcusably violated the conditions of his probation.**

Bachmeier argues that the district court abused its discretion by determining his probation violations were intentional and inexcusable. We disagree and address his three arguments in turn.

First, Bachmeier contends that he was forced to use marijuana because he felt harassed by the probation department. We are not persuaded. Bachmeier knew he was not permitted to use marijuana or other mood-altering chemicals, but he affirmatively chose to do so as evidenced by his admission and positive UAs. He cites no authority for the proposition that a probationer’s frustration with the conditions of court-ordered probation excuses or legally justifies the use of mood-altering chemicals. Arguments advanced without legal support are deemed waived, *State v. Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006), *aff’d on other grounds*, 728 N.W.2d 243 (Minn. 2007), and we reject this argument.

Second, Bachmeier argues that his violation is excusable because he could not meet with his probation officer or complete requested UAs due to his limited income and

lack of a driver's license. We disagree. The record demonstrates that Lieberg worked to facilitate Bachmeier's compliance with his probation conditions, including arranging for Bachmeier to take a UA and meet with a different probation officer in another part of the state. Notwithstanding these efforts, Bachmeier failed to comply with the conditions.

Third, Bachmeier maintains that because he pleaded guilty pursuant to *Alford*, he only needs to comply with probation conditions that are comfortable for him. This argument is unavailing. Although Bachmeier maintains his innocence, he does not dispute the validity of his guilty plea or the district court's authority to impose a stayed prison sentence with probation terms. *See Goulette*, 258 N.W.2d at 761 (holding that a district court may accept a guilty plea even if the defendant maintains his innocence). The court's probation conditions required Bachmeier to abstain from using controlled substances, complete random UAs, and remain in contact with probation. The fact that Bachmeier did not like these conditions does not alter his responsibility to comply with them. On this record, the district court did not abuse its discretion by finding Bachmeier's probation violations were both intentional and inexcusable.

**II. The district court did not abuse its discretion by finding that the need for confinement outweighs the policies favoring probation.**

To determine whether the need for confinement outweighs the policies favoring probation, the district court should consider whether (1) confinement is necessary to protect the public, (2) the offender needs correctional treatment that can most effectively be provided in prison, or (3) reinstating probation would unduly depreciate the seriousness of the violation. *State v. Modtland*, 695 N.W.2d 602, 607 (Minn. 2005). The

district court found that reinstating Bachmeier's probation would minimize the seriousness of his violations in light of their repeated nature and the fact that he received a downward dispositional departure in the first instance. We agree. Bachmeier has demonstrated that he does not take probation seriously, and his repeated violations include illegal activity and go to the heart of his probation terms. Accordingly, we conclude that the district court did not abuse its discretion by finding that reinstating Bachmeier's probation for a third time would only depreciate the seriousness of his violations.

Bachmeier further contends the district court should have imposed more onerous probation conditions instead of revoking his probation. We are not persuaded. The district court continued Bachmeier's probation following two prior violations, yet Bachmeier continued to violate his probation terms. Given Bachmeier's demonstrated unwillingness or inability to comply with straightforward, standard probation conditions, it is doubtful that Bachmeier would comply with more onerous conditions. On this record, we conclude that the district court's decision to revoke Bachmeier's probation was not a reflexive reaction to an accumulation of technical violations and the court did not abuse its discretion by executing his stayed sentence.

**Affirmed.**