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STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2041

State of Minnesota,
Respondent,

vs.

Sharon Jean Hodge,
Appellant.

Filed May 20, 2013
Affirmed
Connolly, Judge

Aitkin County District Court
File No. 01-K1-05-000096

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

James P. Ratz, Aitkin County Attorney, Nicholas B. Wanka, Lisa Roggenkamp Rakotz, Assistant County Attorneys, Aitkin, Minnesota (for respondent)

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

Considered and decided by Stoneburner, Presiding Judge; Worke, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant challenges the district court's decision to revoke her probation and impose an executed sentence. Because we see no abuse of discretion in the decision, we affirm.

FACTS

In 2006, appellant Sharon Hodge was convicted of felony first-degree DWI, gross misdemeanor driving after cancellation, and speeding. She received a stayed sentence of 42 months in prison and was placed on supervised probation for seven years. Her probation conditions included 180 days of local incarceration, electronic home monitoring from December 5 to January 5 annually, refraining from the use of alcohol, and submitting to random chemical testing.

In March 2011, a probation-violation report alleged that appellant had failed to serve the 2010-2011 electronic-home-monitoring session, failed to submit to chemical testing, and failed to remain law-abiding by being charged with driving after revocation. In July 2011, another probation-violation report alleged that appellant failed to remain law abiding by twice driving after revocation. In August 2011, appellant admitted to these allegations. She was reinstated on probation with an additional 90 days of local incarceration, 30 to be served starting immediately and 60 to be served starting October 23, 2011.

On October 25, 2011, a new probation-violation report alleged that appellant had failed to report to jail on October 23, 2011. A warrant was issued for appellant's arrest,

and she was taken into custody on July 11, 2012. On July 23, 2012, another probation-violation report alleged that she had failed to serve the 2011-2012 electronic-home-monitoring session and failed to remain law-abiding by twice driving after revocation.[1] Appellant admitted to these allegations and, following a hearing, her probation was revoked and she was sentenced to serve 42 months in prison and to serve one year concurrent to the 42 months for the additional violation, and to the statutory five-year conditional release period.

She challenges her sentence, arguing that the district court abused its discretion in revoking her probation.

D E C I S I O N

A district court's decision to revoke probation will be reversed only for a clear abuse of the district court's broad discretion. *State v. Osborne*, 732 N.W.2d 249, 253 (Minn. 2007).

Revocation of probation is warranted if: (1) confinement is necessary to protect the public from further criminal activity; (2) corrections treatment is necessary and can most effectively be provided in confinement; or (3) not revoking probation would unduly depreciate the seriousness of the offense. *State v. Austin*, 295 N.W.2d 246, 251 (Minn. 1980). To revoke probation, district courts must (1) designate the specific condition or conditions that were violated, (2) find that the violation was inexcusable, and (3) find that the need for confinement outweighs the policies favoring probation. *Id.* at 250; *see also*

[1] A charge that she also provided false information to a police officer was later dismissed.

State v. Modtland, 695 N.W.2d 602, 606 (Minn. 2005) (requiring district courts to make specific findings on each of the three criteria).

The district court found that: (1) "[appellant's] whereabouts have been unknown and she was without any supervision for a period of approximately 18 months"; (2) appellant "has demonstrated a pattern of failing to cooperate with supervising agents and a lack of truthfulness"; and (3) appellant "has had multiple prior violations of terms of her probation." Based on these findings, the district court concluded that: (1) "[appellant's] current violations of probation were intentional and without lawful excuse"; (2) her "need for confinement . . . outweighs the policies favoring probation"; and (3) not revoking appellant's probation "would unduly depreciate the seriousness of the violations."

Appellant first argues that her incarceration is not necessary to protect the public, *see Austin*, 295 N.W.2d at 251, because her repeated driving-after-revocation offenses were misdemeanors that did not "compromise public safety to a degree that warrants incarceration" and, although her failure to turn herself in when a warrant was issued for her arrest was "a serious matter to be addressed by the court," the behavior leading to the warrant, i.e., failing to report to jail at the agreed-on time, did not indicate that appellant is a threat to public safety. Appellant offers no legal support for these arguments, nor does she address her repeated violations of the rules of probation itself, *i.e.* keeping in touch with her probation officer, fulfilling her electronic-home-monitoring requirement, and reporting to jail to serve the portion of the sentence that she had been permitted to defer.

Second, she argues that she is not in need of correctional treatment and is amenable to probation, *see id*., because, while on probation, she had no further drug- or alcohol-related offenses, completed chemical-dependency treatment, refrained from the use of alcoho1, and completed 103 hours of community service. But, because appellant was not in contact with the probation office and failed to fulfill the electronic-home-monitoring requirement from at least October 2011 until her arrest in July 2012, it was impossible for the district court to know if she had in fact abstained from alcohol and drugs during that period. And her repeated violations demonstrate that she is not amenable to probation.

Appellant's excuse for failing to turn herself in to complete her jail sentence was that she had nowhere for her friends and her cat to stay if she went to jail; her excuse for not submitting to the home monitoring was that she could not afford it. The district court rejected these excuses, telling appellant:

> The big issue that I really have with you . . . is that you promised me you'd come back to jail October 23rd.
> . . . .
> And for eight months you didn't do it. You knew there was a warrant out for you, and you didn't do it. I would never put anybody in jail because they're poor. I would never put anybody in jail because they're homeless. But you had a long, long time out there without any kind of supervision, and with full opportunity to settle up. . . . I figured there was about 14 months, give or take, when your case was on warrant status during the period of time you were on probation. There [were] other, many other months when you weren't being supervised at all because of the situations and your status and your whereabouts.

The conclusion that appellant's need for confinement outweighs the policies favoring probation is supported by the record.

Finally appellant argues that not imposing her sentence would not have "unduly depreciated the seriousness of [her] violations," *see id*., because "[her] underlying behaviors of failing to report to jail, remaining on warrant status, and driving without a valid license do not merit the same severity of punishment as would be appropriate for a defendant exhibiting an overall less positive adjustment to probation." But, as the district court observed, remaining out of touch with probation for many months, failing to report to jail as agreed, and failing to respond to an arrest warrant are not indicia of "a positive adjustment to probation."

The district court did not abuse its discretion in revoking appellant's probation.

Affirmed.