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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2028**

State of Minnesota,
Respondent,

vs.

Christopher Joel Case,
Appellant.

**Filed July 20, 2020
Affirmed
Cochran, Judge**

Wright County District Court
File No. 86-CR-16-4021

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Tom Kelly, Wright County Attorney, Buffalo, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Amy Lawler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and Bryan, Judge.

UNPUBLISHED OPINION

COCHRAN, Judge

Appellant challenges the district court's order revoking his probation and executing his sentence. Appellant argues that the district court abused its discretion by finding that the need for confinement outweighed the policies favoring probation. We affirm.

FACTS

In August 2016, respondent State of Minnesota charged appellant Christopher Case with three counts of first-degree criminal sexual conduct (CSC), three counts of second-degree CSC, and two counts of fourth-degree CSC. The charges related to conduct involving his stepdaughter. Case subsequently pleaded guilty to one count of first-degree CSC and the remaining counts were dismissed pursuant to a plea agreement with the state. Consistent with the agreement, the district court sentenced Case to 144 months' imprisonment with ten years of conditional release, stayed execution of the sentence, placed him on probation for a period of 30 years, and imposed a year of local confinement.

As conditions of probation, the district court ordered that Case successfully complete sex-offender treatment, attend individual therapy as directed, complete a chemical-dependency evaluation, and follow the recommendations of the evaluation. Case was also prohibited from (1) possessing pornography; (2) possessing devices capable of accessing the internet unless the device was approved by probation; (3) using mood-altering chemicals, including alcohol; and (4) having any contact with the victim and having any unsupervised contact with any females under the age of 18.

Case had a number of probation violations before the district court ultimately revoked his probation in September 2019. In May 2018, Case's probation officer filed a probation-violation report alleging that Case violated the terms of his probation by using methamphetamine and by being terminated from sex-offender treatment due to rule violations, including drug use. Case admitted to both of the alleged violations. For these

violations, the district court continued Case on probation but required him to spend 30 days in local confinement.

In January 2019, Case's probation officer filed another probation-violation report alleging that Case violated the terms of his probation by using methamphetamine and failing to complete his outpatient chemical-dependency treatment program. Case again admitted the violations. The district court continued Case on probation and ordered him to spend 21 days in local confinement. Three months later, Case's probation officer filed a third probation-violation report. This report alleged that Case had left an inpatient chemical-dependency treatment program without completing it. An addendum to the probation-violation report was later filed alleging that Case had used methamphetamine. Case admitted the violations, and the district court once again continued Case on probation. The district court also ordered Case to serve 60 days in local confinement.

A fourth probation-violation report was filed in August 2019. This report alleged that Case had used methamphetamine, possessed undisclosed smart phones, and possessed and viewed pornography. At a probation-violation hearing, Case admitted the violations. The state then sought execution of Case's stayed prison sentence. In response, Case argued for "one more opportunity to be on probation," and requested that he be allowed to enter concurrent residential chemical-dependency treatment and outpatient sex-offender treatment.

The district court granted the state's request, revoked Case's probation, and executed his sentence. The district court found that Case violated the conditions of his probation and that the violations were knowing, willful, and inexcusable. The district court

also found that the need for confinement outweighed the policies favoring probation, emphasizing that Case had been given numerous opportunities to address both his sexual conduct and his chemical dependency issues through treatment.

This appeal follows.¹

D E C I S I O N

Case argues that the district court abused its discretion when it revoked his stay of execution because the record does not support the district court's finding that the need for confinement outweighed the policies favoring probation. We disagree.

“A district court has broad discretion in determining if there is sufficient evidence to revoke probation and should be reversed only if there is a clear abuse of that discretion.” *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005) (quotation omitted). A district court “abuses its discretion when it acts arbitrarily, without justification, or in contravention of the law.” *State v. Mix*, 646 N.W.2d 247, 250 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002).

If an offender with a stay of execution admits a probation violation, a district court may either continue the offender on probation or revoke probation and execute the sentence. Minn. R. Crim. P. 27.04, subd. 3(2)(b)(iv)-(v). Before a district court revokes an individual's probation, it must make three specific findings: (1) that the probationer violated a specific condition of his or her probation; (2) that the violation was intentional

¹ The state did not file a brief, and this court ordered the appeal to proceed under Minn. R. Civ. App. P. 142.03 (providing that if a respondent fails to file a brief, the case shall be determined on the merits).

or inexcusable; and (3) that the need for confinement outweighs the policies favoring probation. *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). These findings are commonly known as the *Austin* factors. In making these findings, “courts must seek to convey their substantive reasons for revocation and the evidence relied upon.” *Modtland*, 695 N.W.2d at 608. Fundamentally, a district court’s decision to revoke 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.” *Austin*, 295 N.W.2d at 251 (quotation omitted).

Here, the district court considered each of the three *Austin* factors. Case challenges only the district court’s finding on the third *Austin* factor—that the need for his confinement outweighed the policies favoring probation. When assessing this third factor, a district court should balance whether: (1) “confinement is necessary to protect the public from further criminal activity by the offender”; (2) “the offender is in need of correctional treatment which can most effectively be provided if he is confined”; or (3) “it would unduly depreciate the seriousness of the violation if probation were not revoked.” *Modtland*, 695 N.W.2d at 607 (quotation omitted). A district court is not required to find that all three considerations weigh in favor of confinement in order for the third *Austin* factor to be met. *See Goldman v. Greenwood*, 748 N.W.2d 279, 283 (Minn. 2008) (stating that “we normally interpret the conjunction ‘or’ as disjunctive rather than conjunctive”).

In assessing the third *Austin* factor, the district court found that the need for confinement outweighed the policies favoring probation² because Case had been given “numerous opportunities to address both [his] criminal-sexual-conduct behavior and [his] chemical-dependency issues,” and because he is in need of treatment that can be provided most effectively during confinement. The district court also found that “it would depreciate the seriousness of the violation on this fourth violation if I were not to revoke your probation given the fact that you were given a significant downward departure in the beginning.”

Case argues that the district court’s findings regarding the third *Austin* factor are not supported by the record. Specifically, he contends that the district court failed to give sufficient weight to his proposed treatment opportunity, which “would allow him to simultaneously take part in chemical-dependency and sex-offender treatment programs, when during prior attempts he’d had to attempt to tackle one a time.” We are not persuaded.

The record reflects that the district court specifically considered Case’s proposed treatment request. The district court found that Case had been given numerous opportunities, but failed to take advantage of the treatment opportunities and services that were provided to him. The district court then declined Case’s request to participate in a concurrent treatment opportunity, finding that “I don’t think [your treatment failures are]

² The district court actually found that “the need for confinement is outweighed by policies favoring probation.” But the district court appears to have misspoken because the court’s findings on the record as to this factor demonstrate otherwise, as does its decision to revoke Case’s probation.

because you haven't found the right treatment that's a good fit for you, I think it's because you are *choosing* not to take advantage of those services when they're offered to you.” (Emphasis added.)

The district court's findings are supported by the record. The record reflects that this was Case's fourth probation violation. Each of Case's first three violations involved his failure to complete chemical-dependency or sex-offender treatment. And all of Case's four probation violations involved his continued use of methamphetamine. Case has been offered treatment on multiple occasions but has failed to take advantage of these opportunities or to show a commitment to rehabilitation. Therefore, it was not unreasonable for the district court to conclude that Case had failed at treatment outside of confinement. Further, the district court was not required to provide Case with another opportunity to seek outpatient treatment before revoking his probation. *See State v. Osborne*, 732 N.W.2d 249, 252, 255-56 (Minn. 2007) (concluding that the district court did not abuse its discretion by revoking the defendant's probation without giving the defendant an opportunity to seek additional probationary resources, including inpatient treatment). Accordingly, it was within the district court's discretion to have rejected Case's request to participate in his proposed new treatment opportunity.

Moreover, in addition to Case's treatment failures and continued use of controlled substances, the record reflects that Case possessed unauthorized electronic devices and possessed pornography. Given that Case pleaded guilty to criminal sexual conduct, the record supports the district court's determination that the seriousness of Case's probation violations would be denigrated if probation were not revoked.

The district court has broad discretion in weighing the need for confinement against the policies favoring probation, and the court revoked Case's probation as a last resort. The record supports the district court's determination that the need for confinement outweighed the policies favoring probation. Therefore, we conclude that the district court did not abuse its discretion by revoking Case's probation and executing his sentence.

Affirmed.