

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-912**

George Jerry Matlock,
petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 5, 2010
Affirmed
Crippen, Judge***

Ramsey County District Court
File No. 62-K1-05-3735

Marie L. Wolf, Interim Chief Appellate Public Defender, F. Richard Gallo, Jr., Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Susan Gaertner, Ramsey County Attorney, Mitchell L. Rothman, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 315, St. Paul, MN 55102 (for respondent)

Considered and decided by Hudson, Presiding Judge; Stauber, Judge; and Crippen, Judge.

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

UNPUBLISHED OPINION

CRIPPEN, Judge

Appellant George Matlock disputes the order revoking his probation, arguing that the district court erred because it did not provide specific reasons for choosing incarceration over probation, or explain the evidence relied upon in reaching the determination. We affirm.

FACTS

In February 2006, a jury convicted appellant of felony theft of two computers worth more than \$2,500, in violation of Minn. Stat. § 609.52, subd. 2(1) (2004). The jury also determined that appellant met the conditions for sentencing as a career offender, under Minn. Stat. § 609.1095, subd. 4 (Supp. 2005), because he had five prior felony convictions and the offense charged in this case was committed “as a pattern of criminal conduct.” The district court sentenced appellant as a career offender to 90 months, an upward durational departure from the presumptive 23 months. On a direct appeal, this court reversed and remanded for reasons unrelated to this appeal. In June 2008, appellant entered a guilty plea at a plea hearing on the same charge, and in August he was sentenced to a 90-month stayed sentence, an upward durational departure and downward dispositional departure from the presumptive sentence.

In February 2009, appellant appeared at a probation violation hearing before the same district court judge who presided over the plea hearing. Appellant admitted violating the conditions of his probation by (1) using alcohol and drugs, (2) failing to submit urine samples for urine analysis testing, (3) failing to report two new arrests,

(4) failing to comply with the recommendations of his chemical dependency evaluation, and (5) failing to remain law-abiding. Based on these probation violations, the district court revoked appellant's probation and executed his sentence.

D E C I S I O N

District courts have broad discretion to determine whether there is sufficient evidence to revoke probation and will only be reversed for abuse of this discretion. *State v. Ornelas*, 675 N.W.2d 74, 79 (Minn. 2004). Appellant does not argue that the court did not enumerate the requisite findings, a matter-of-law topic; rather, he argues that its findings were not supported by specific reasons and evidence.

In *State v. Austin*, 295 N.W.2d 246 (Minn. 1980), the supreme court explained the importance of careful consideration before revoking probation: “The purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed. There must be a balancing of the probationer’s interest in freedom and the state’s interest in insuring his rehabilitation and the public safety.” 295 N.W.2d at 250. Revocation cannot be an impulsive response to technical violations; it requires a showing that the defendant cannot be expected to avoid harmful or disruptive behavior that may endanger the public. *Id.* at 251. To ensure these principles are satisfied, before revoking a defendant’s probation a district court must satisfy what are commonly referred to as the *Austin* factors. Two of those factors, the designation of specific probationary violations and findings that these violations were intentional or inexcusable, are not at issue here. *See id.* at 250 (setting forth the three *Austin* factors). *Austin* also demanded a finding that the need for confinement outweighs the policies favoring probation. *Id.*

In considering the third *Austin* factor, a district court should consider whether confinement is necessary to protect the public from further criminal activity by the offender, whether the offender is in need of correctional treatment which can most effectively be provided if he is confined, and whether it would unduly depreciate the seriousness of the violation if probation were not revoked. *Id.* at 251 (citing A.B.A. Standards for Criminal Justice, Probation sec. 5.1(a) (Approved Draft, 1970)). District courts are instructed to make “fact-specific records setting forth their reasons for revoking probation.” *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005). Citing *Modtland*, appellant argues that the court revoked his probation without providing substantive reasons for choosing incarceration over community treatment, and without explaining the evidence it relied upon.

When revoking appellant’s probation, the district court explained that appellant had failed rehabilitative aims by violating promises associated with the stay of his sentence. Addressing public interests in public safety and punishment, the court observed that appellant was “out of control.” The court concluded that appellant’s addiction was uncontrolled and hoped that this might be corrected while appellant was incarcerated so the court would not be dealing with further offenses. On this record, it is evident that the district court did not simply conform to procedural requirements.

The district court had substantive reasons and ample evidence to revoke appellant’s probation. The court’s public-safety concerns were supported by evidence of multiple arrests of appellant while on probation. The court was presented with evidence that appellant had a pending felony charge for violation of a domestic abuse no-contact

order and pending charges for criminal damage to property and gross misdemeanor theft for stealing a laptop; the latter charge involved the same behavior shown in this case. Based on this evidence, it was reasonable for the district court to conclude that public safety requires appellant's confinement.

It also was reasonable for the court to conclude that the policies favoring probation, such as rehabilitation, are not served by continuing on probation one who has failed to complete drug and alcohol treatment, continues to use alcohol and drugs, and continues the very behavior that led to sentencing in this case. Finally, it was reasonable for the court to conclude that it "ha[d] to think about punishment," which shows concern that the seriousness of appellant's crime is not unduly depreciated.

The district court did not abuse its discretion when revoking appellant's probation. "Revocation is justified when there is enough evidence to satisfy the decision-maker that the conduct of the offender does not meet the conditions of his release." *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 27 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006). There is ample evidence on this record to support the court's decision that appellant violated the conditions of his probation, and that the need for confinement outweighs the policies favoring probation.

Affirmed.