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STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1322

State of Minnesota,
Respondent,

vs.

Kristen Marie Stradtmann,
Appellant.

Filed April 13, 2020
Reversed and remanded
Reyes, Judge

Lyon County District Court
File No. 42-CR-17-398

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

Rick Maes, Lyon County Attorney, Abby Wikelius, Assistant County Attorney, Marshall, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Bryan, Judge.

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

REYES, Judge

In this appeal from an order revoking appellant's probation and executing a previously stayed prison sentence, appellant argues that the district court abused its

discretion because it (1) improperly determined that appellant received a downward dispositional departure and (2) made insufficient findings on the third *Austin* factor. We reverse and remand.

FACTS

On the night of April 14, 2017, appellant Kristen Marie Stradtmann struck another vehicle while driving and left the scene. An officer responded and proceeded to appellant's home approximately one block away, to which appellant returned shortly thereafter. The officer made contact with appellant and noticed an odor of alcohol and that appellant had bloodshot, watery eyes and poor balance. Appellant then got into an altercation with the officer as he attempted to arrest her. She repeatedly commanded her 150- to 200-pound dog to attack the officer, and it jumped at and bit him, allowing appellant to run free. Additional officers arrived at the home and ultimately arrested appellant and brought her into custody.

Appellant entered an *Alford* plea[1] to a charge of second-degree assault with a dangerous weapon, her dog, in violation of Minn. Stat. § 609.222, subd. 1 (2016), during which she acknowledged that the state would present the above evidence. Appellant entered a traditional guilty plea on a charge of driving while intoxicated in violation of Minn. Stat § 169A.20, subd. 1(7) (2016). The district court sentenced appellant to 27

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[1] In an *Alford* plea, a defendant maintains her claim of innocence, but she agrees that the state has sufficient evidence for a jury to find her guilty and chooses to accept the state's plea offer. *See North Carolina v. Alford*, 400 U.S. 25, 37-38, 91 S. Ct. 160, 167-68 (1970); *see also State v. Goulette*, 258 N.W.2d 758, 760-61 (Minn. 1977) (recognizing *Alford* pleas in Minnesota).

months' imprisonment, stayed for five years. Appellant's probation conditions for the assault offense included the requirements that she remain law abiding and not use or possess alcohol or drugs except as prescribed.

The Minnesota Department of Corrections filed a probation-violation report alleging that appellant failed to remain law abiding due to three drug-related charges filed on March 11, 2019, and that she violated the no-use condition based upon her admission to law enforcement that she had been using methamphetamines. It recommended revoking her probation and executing the imposed sentence.

Respondent State of Minnesota withdrew the alleged violation for failing to remain law abiding because the violation depended on the outcome of an ongoing criminal case in another county, for which the parties had already twice delayed the probation-revocation proceedings. At the revocation hearing, appellant admitted to violating her probation by using methamphetamines. The district court revoked appellant's probation and executed the previously stayed sentence of 27 months' imprisonment. This appeal follows.

D E C I S I O N

I. The district court sentenced appellant to a downward dispositional departure.

Appellant argues that the district court incorrectly determined that her stayed sentence is a downward dispositional departure[2] rather than the presumptive sentence. We disagree.

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[2] While we note that the district court did not refer to a "downward dispositional departure" at the revocation hearing, it referred to a downward departure, to amenability to probation or treatment, and to appellant's "Departure Report," which categorized the departure type as "dispositional." Neither party contends that the district court intended to refer to another

As an initial matter, appellant did not object to the district court's characterization of her sentence or otherwise raise this issue to the district court. We generally only consider issues presented to and considered by the district court. *State v. Beaulieu*, 859 N.W.2d 275, 278 n.3 (Minn. 2015). But because this issue relates to the probation-revocation issue, we will review it.

Whether a sentence conforms to the requirements of a statute or the sentencing guidelines is a question of law that we review de novo. *See State v. Williams*, 771 N.W.2d 514, 520 (Minn. 2009). Second-degree assault is subject to a mandatory minimum sentence. Minn. Stat. § 609.11, subd. 9 (2016). "[T]he presumptive disposition for an offense subject to a mandatory sentence under Minn. Stat. § 609.11 is always commitment." Minn. Sent. Guidelines 2.E.2.b(1) (2016). Therefore, appellant's second-degree-assault conviction carried a presumptively executed sentence, and the district court's imposition of a stayed sentence constituted a downward dispositional departure. *See In re Welfare of D.W.*, 731 N.W.2d 828, 834 (Minn. App. 2007) (rejecting argument that presumptive sentence for second-degree assault, as level-VI offense, is stayed); *see also* Minn. Sent. Guidelines cmt. 2.E.01 (2016).

Appellant's reliance on *State v. Barker*, 705 N.W.2d 768 (Minn. 2005), to argue that a mandatory minimum sentence functions as an aggravating factor when it changes a presumptive sentence from stayed to executed is inapposite. Here, the presumptive sentence *is* executed. Moreover, appellant pleaded guilty to and waived her right to a jury

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type of downward departure, and it is clear that the stayed sentence would be a downward dispositional departure.

trial on second-degree assault with a dangerous weapon, the elements of which alone support the imposition of a mandatory minimum sentence. *See* Minn. Stat. §§ 609.11 (applying mandatory minimum when offender uses dangerous weapon), 609.222 (describing second-degree assault as assault with a dangerous weapon).

Because we conclude that appellant's sentence is not an upward departure and no element of appellant's offense operated as an aggravating factor, we need not address her argument that Minn. Stat. § 244.10, subd. 4 (2016), and Minn. R. Crim. P. 7.03 required the state to provide notice of its intent to seek an "aggravating factor."

II. The district court abused its discretion by revoking appellant's probation without making sufficient findings on the third *Austin* factor.

Appellant argues that the district court abused its discretion because it relied on only appellant's downward dispositional departure and did not adequately describe the factual basis for its revocation or the substantive reasons supporting it. Appellant's argument has merit.

We give broad deference to a district court's determination that there is sufficient evidence to revoke probation. *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). But whether the district court made the required findings to revoke probation is a question of law that we review de novo. *State v. Fleming*, 869 N.W.2d 319, 331 (Minn. App. 2015), *aff'd on other grounds*, 883 N.W.2d 790 (Minn. 2016). A district court may revoke probation if the probationer violates any of the probation conditions. Minn. Stat. § 609.14, subd. 1(a) (2018). But its decision must not be "a reflexive reaction to an accumulation of technical violations." *Austin*, 295 N.W.2d at 251 (quotation omitted). Technical violations

are "any violation of a court order of probation, except an allegation of a subsequent criminal act that is alleged in a formal complaint, citation, or petition." Minn. Stat. § 244.196, subd. 6 (2016).

In revoking probation, the district court must (1) specify the condition or conditions that the probationer violated; (2) find that the probationer intentionally or inexcusably violated the condition; and (3) "find that [the] need for confinement outweighs the policies favoring probation." *Austin*, 295 N.W.2d at 250. A district court must provide substantive reasons and the evidence upon which it relied in making its *Austin* findings. *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005). "[District] courts should not assume that they have satisfied *Austin* by reciting the three factors and offering general, non-specific reasons for revocation[] . . . ." *Id.* Rather, district courts must make "thorough, fact-specific records" and "seek to convey their substantive reasons for revocation and the evidence relied upon." *Id.*

Appellant challenges only the district court's findings on the third *Austin* factor. Under this factor, district courts "must balance 'the probationer's interest in freedom and the state's interest in insuring [the probationer's] rehabilitation and the public safety,' and base their decisions 'on sound judgment and not just their will.'" *Id.* at 607 (quoting *Austin*, 295 N.W.2d at 250-51). Further, district courts "should refer to" whether "(i) confinement is necessary to protect the public," "(ii) the offender is in need of correctional treatment which can most effectively be provided if [the offender] is confined," or (iii) not revoking probation "would unduly depreciate the seriousness of the violation." *Id.* (quoting *Austin*, 295 N.W.2d at 251).

Here, the district court found that appellant violated her probation condition of not using or possessing alcohol or drugs. It then stated that

> I am going to—I find that the violation was intentional or inexcusable. Further, the need for confinement outweighs policy favoring probation because you are in need of correctional treatment that can be best offered if confined, and it would unduly depreciate the seriousness of the violation if probation were not revoked.

After executing appellant's 27-month sentence, the district court addressed appellant and added that it had reviewed the departure report, and "one of the main factors that was considered [in staying the sentence] was your amenability to probation or treatment and, unfortunately, that has not been the case in this matter."

The district court's findings are essentially a recitation of the *Austin* factors, and its additional statement that appellant had not been amenable to probation or treatment does not provide more than a "general, non-specific reason[] for revocation," against which *Modtland* cautioned. *Id.* at 608. These findings reveal neither the evidence upon which the district court relied nor its substantive reasons for revoking appellant's probation. *See id.* For example, its findings do not show how it determined that treatment would "be best offered" if appellant were confined, as she had not been required to participate in any community-based treatment with which to compare treatment in confinement. In contrast with cases in which probationers have nearly exhausted community-based treatment options, there is no indication that treatment is not available here. *See, e.g.*, *Fleming*, 869 N.W.2d at 331. The district court also did not describe the seriousness of appellant's violation in concluding that not revoking her probation would depreciate it. Finally, while

a district court may consider a downward dispositional departure in its revocation decision, *id.*, the district court did not substantiate its finding that appellant had not been amenable to probation or treatment or relate that finding to any of the *Austin* factors.

"[I]t is not the role of appellate courts to scour the record to determine if sufficient evidence exists to support the district court's revocation." *Modtland*, 695 N.W.2d at 608. The district court abused its discretion by revoking appellant's probation without stating adequate reasons to support its finding that the need for confinement outweighed the policies favoring continued probation. We therefore reverse and remand for additional findings as to the third *Austin* factor. *See id.*

Reversed and remanded.