STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0376

State of Minnesota,
Respondent,

vs.

Heather Anne Anderson-Larscheid,
Appellant.

Filed December 21, 2020
Affirmed
Slieter, Judge

Rice County District Court
File No. 66-CR-18-1119

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

John L. Fossum, Rice County Attorney, Terence Swihart, Assistant County Attorney, Faribault, Minnesota (for respondent)

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

Considered and decided by Slieter, Presiding Judge; Bratvold, Judge; and Cochran, Judge.

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

SLIETER, 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 did not find, and the record did not show, that the need for confinement outweighed the policies favoring probation. Because the record reveals that the district court carefully applied *Austin* and *Modtland* in revoking probation, we affirm.

FACTS

Appellant Heather Anne Anderson-Larscheid entered a guilty plea to first-degree sale of methamphetamine, in violation of Minn. Stat. § 152.021, subd. 1(1) (2016). The district court accepted her plea and convicted her of that offense. At sentencing, the district court granted appellant's request for a downward dispositional departure finding appellant to be "particularly amenable to probation" and "particularly amenable to treatment." The district court sentenced appellant to serve 65 months in prison, stayed execution of the sentence for fifteen years, and placed appellant on probation. As a condition of probation appellant was required to enroll in and complete and follow all the rules and regulations of the Rice County Treatment Court.

The department of corrections subsequently filed a probation-violation report alleging that appellant had been discharged from treatment court. The report indicated that appellant had been terminated from the Rice County Treatment Court after being discharged from treatment at the Pathways residential program. The report concluded that while appellant had some success in other treatment settings, she had "exhausted the resources available in the community" due to her "[inability] to comply with basic rules and expectations."

Based on the above, the district court found appellant to have intentionally and inexcusably violated the terms of her probation and that the need for her confinement

outweighed the policies favoring probation. The district court revoked appellant's probation and committed her to prison. This appeal follows.

D E C I S I O N

Whether a district court has made the findings required to revoke probation is a question of law we review *de novo*. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005); *State v. Fleming*, 869 N.W.2d 319, 331 (Minn. App. 2015), *aff'd*, 883 N.W.2d 790 (Minn. 2016). "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.'" *Modtland*, 695 N.W.2d at 605 (quoting *Austin*, 295 N.W.2d at 249-50). Thus, "like all exercises of judicial discretion," the decision to revoke probation "requires 'conscientious judgment, not arbitrary action.'" *State v. Cottew*, 746 N.W.2d 633, 638 (Minn. 2008) (quoting *Burns v. United States*, 287 U.S. 216, 222-23, 53 S. Ct. 154, 156 (1932)). When revoking probation, a district court must: (1) specify the conduct or conditions that the probationer violated, (2) find the violation was intentional or inexcusable, and (3) find that the need for confinement outweighs the policies favoring probation. *Austin*, 295 N.W.2d at 250.

Appellant challenges the district court's findings only as to the third *Austin* factor, arguing that "the record did not show, and the district court did not find, that the need for confinement outweighed the policies favoring probation." Pursuant to 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.'" *Modtland*, 695 N.W.2d at 607 (quoting

Austin, 295 N.W.2d at 250-51). In making this determination, 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).

The ultimate question this court must answer is not whether the district court simply recited the correct factors in coming to its conclusion. Indeed, mere recitation of the three *Austin* factors cannot satisfy the requirements for revocation. *Modtland*, 695 N.W.2d at 608 ("[C]ourts should not assume they have satisfied *Austin* by reciting the three factors . . . ."). Rather, the question is whether the district court examined proper considerations, compared those considerations to a "thorough, fact-specific record[]," and thereby properly concluded that revocation was appropriate. *Id.* We conclude the district court examined the proper considerations found in the record and that its decision to revoke probation was not an abuse of discretion.

In concluding that the third *Austin* factor was met, the district court stated:

> Whether or not the Court believes that [treatment in the community] can meet [appellant's] needs—and it may meet her needs—that doesn't address the third factor, the need for revocation to show the severity of the violation. The Court is persuaded by the State that the sentence to treatment court was a dispositional—a downward dispositional departure that was based upon [appellant's] particular amenability to treatment, and she has shown and by finding that she has violated probation, the Court has found that she is no longer particularly amenable to probation. The Court is persuaded that the behaviors and actions while at Pathways that resulted in [appellant] leaving against medical advice to not be discharged . . . show that she's not particularly amenable to probation, and, therefore, the violation of being discharged from treatment court is *so severe that revocation is necessary in order to . . . not unduly depreciate the severity of it*.

(emphasis added). Though the district court did not specifically recite the language of the third *Austin* factor—that "the need for confinement outweighs the policies favoring probation"—that is not the critical question here. What is critical is that the district court specifically found that not revoking probation "would unduly depreciate the seriousness of the violation," referring to one of three sub-factors courts "should refer to" in deciding the third *Austin* factor. *Austin*, 295 N.W.2d at 251.

Though the district court did not specify which "behaviors and actions while at Pathways" it was referring to, we need not "scour the record" to make that determination. *Modtland*, 695 N.W.2d at 608 ("[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."). The district court's oral findings were presented shortly after the district court heard from the probation agent regarding appellant's continuing criminal and dishonest thinking, her history of attendance issues, her continued substance abuse, and other concerns with her lack of compliance while in treatment. It is clear that these were the facts upon which the district court's decision was made. Furthermore, the district court explicitly considered the option of continued treatment in the community, it applied its "broad discretion" to determine that such an arrangement would not be appropriate given appellant's severe violation and history of noncompliance. *Id.* at 605 (quotation omitted). Thus, the district court made sufficient findings to satisfy the third *Austin* factor.

Finally, appellant objects to the district court's reference to appellant allegedly "leaving [Pathways] against medical advice." It is undisputed that appellant was

discharged from treatment. The district court made reference to appellant's discharge as it carefully considered the third *Austin* factor. The district court stated: "The Court is persuaded that the behaviors and actions while [in treatment] that resulted in [appellant] leaving against medical advice to not be discharged . . . show that she's not particularly amenable to probation . . . ." Though the district court referenced the allegation that appellant discharged herself, the district court's reasoning clearly focused on appellant's "behaviors and actions," the severity of those behaviors and actions, and how they "show that [appellant is] not particularly amenable to probation . . . ." The district court did not abuse its discretion in concluding that revocation of probation was appropriate.

Affirmed.