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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0625**

State of Minnesota,
Respondent,

vs.

Terrance Trevelle Hill,
Appellant.

**Filed December 14, 2020
Affirmed
Gaïtas, Judge**

Dakota County District Court
File No. 19HA-CR-13-520

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

James C. Backstrom, Dakota County Attorney, Anna Light, Assistant County Attorney, Hastings, Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Reyes, Judge; and Gaïtas, Judge.

UNPUBLISHED OPINION

GAÏTAS, Judge

Appellant Terrance Trevelle Hill argues that the district court abused its discretion in revoking his probation and executing his prison sentence. He challenges the district

court's findings under each of the three probation-revocation factors from *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980), arguing that (1) the district court relied on unnoticed violations to find that he violated conditions of probation, (2) there was insufficient proof that the violations were intentional or inexcusable, and (3) there was insufficient proof that the need for confinement outweighed the policies favoring probation. Because the district court made detailed factual findings on the three *Austin* factors on remand from this court, and the record supports those findings, we conclude that the district court did not abuse its discretion in revoking Hill's probation. We affirm.

FACTS

In February 2013, respondent State of Minnesota charged Hill with two counts of first-degree criminal sexual conduct with a person under the age of 13, Minn. Stat. § 609.342, subd. 1(a) (2004). A jury trial resulted in a hung jury. Following the mistrial, Hill entered into a plea agreement with the state. He pleaded guilty to one count of first-degree criminal sexual contact with a person under age 13. The district court granted the parties' joint request for a downward dispositional departure from the sentencing guidelines, staying execution of a 187-month prison sentence and placing Hill on probation for 15 years. As bases for the departure, the district court cited Hill's particular amenability to probation and willingness to participate in sex-offender treatment.

In June 2016, Hill admitted to violating the conditions of his probation by failing to complete sex-offender treatment and by failing to submit to urinalysis tests. As a consequence, the district court ordered Hill to serve 30 days in jail but reinstated his probation with the same conditions. At a hearing in April 2018, Hill admitted to again

violating his probation by failing to complete sex-offender treatment and by using illegal drugs. The district court directed Hill to serve 120 days in jail and again reinstated his probation with the same terms.

In November 2018, the state alleged that Hill had violated his probation for a third time, and there was another probation-revocation hearing. The state identified five alleged violations: failing to submit to urinalysis tests, failing to abstain from the use of illegal drugs, failing to enter inpatient chemical-dependency treatment, failing to complete sex-offender treatment, and failing to maintain contact with probation. At the hearing, Hill admitted to all five of the alleged violations. Then, the parties argued regarding the appropriate consequence for the violations. The state sought execution of the stayed prison sentence. Hill requested continued probation. The district court revoked Hill's probation, executed his prison sentence, and imposed a ten-year conditional release.

On appeal, we determined that the district court's findings on the second and third *Austin* factors—whether Hill's probation violations had been intentional or inexcusable and whether the need for confinement outweighed the policies favoring continued probation—were insufficient to support the revocation of Hill's probation. *See State v. Hill*, No. A19-0313, 2019 WL 5107465, at *4-5 (Minn. App. Oct. 14, 2019). We reversed and remanded, instructing the district court to make additional findings. *Id.* at *5.

Following remand, the parties appeared before a newly assigned district court judge for a probation-revocation hearing.¹ Both the state and Hill agreed that the district court's

¹ Between the appeal and remand, the original district court judge retired. At the revocation hearing, the district court also granted a request by Hill to reduce his prison term because

focus would be the second and third *Austin* factors, which had prompted the remand. Regarding the first *Austin* factor—the conditions violated—the parties and the district court made clear that Hill’s admissions during the November 2018 hearing to five separate probation violations would stand and would continue to serve as the bases for the state’s revocation request. Then, with no objection from Hill, the state called Hill’s probation officer as a witness to supplement the record on the two factors to be considered by the district court on remand. According to the probation officer, Hill was not amenable to probation. She recommended revocation of his probation.

After the hearing, the district court issued a nine-page order, which included detailed factual and legal findings and concluded that revocation of Hill’s probation was necessary. The district court relied on Hill’s admissions during the November 2018 hearing as the bases for the violations. As to the second *Austin* factor, the district court determined that the violations were intentional and without mitigating excuse because Hill had explained that: (i) he failed to appear for random testing because he was working; (ii) he tested positive for THC after eating “candy”; (iii) he was discharged from an outpatient chemical-dependency treatment program because the providers believed inpatient treatment was required; (iv) he started sex-offender treatment on two occasions, but had not finished because the treatment professionals believed chemical-dependency treatment was necessary first; and (v) although he had attended many appointments with his probation officer, he failed to appear at some appointments. The district court concluded that Hill’s

Hill was charged for conduct that spanned a range of dates during which changes were made to the sentencing guidelines.

“explanation[s] [did] not rise to mitigating excuses,” though, because the evidence suggested that Hill understood his probationary requirements, that he was assisted by an experienced probation officer who understood his chemical abuse, financial situation, and other impediments, and that he continued to violate probation even after significant jail sanctions. Regarding the third *Austin* factor, the district court found that Hill’s actions, “particularly his unwillingness and/or inability to comply with probation services,” show that community-based programming is “no longer appropriate” and the need for confinement outweighs the policies favoring probation. The district court accordingly revoked Hill’s stay of execution and ordered that he serve his prison sentence.

Hill appeals.

D E C I S I O N

To revoke a criminal defendant’s probation, a district court must make the following three findings: (1) the defendant violated a specific condition or conditions of probation, (2) the violation was intentional or inexcusable, and (3) the “need for confinement outweighs the policies favoring probation.” *Austin*, 295 N.W.2d at 250. These findings, which the Minnesota Supreme Court identified in the *Austin* case, are known as the *Austin* factors. *See id.*

In *State v. Modtland*, the supreme court further held that when making findings on the three *Austin* factors, district courts “must seek to convey their substantive reasons for revocation and the evidence relied upon.” 695 N.W.2d 602, 608 (Minn. 2005). In other words, a district court should not merely cite the three factors or offer only general, nonspecific reasons for revoking probation. *Id.*

Hill contends that the district court's findings on the *Austin* factors are inadequate, and therefore, the revocation of his probation was unlawful. 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." *Austin*, 295 N.W.2d at 249-50. But whether the district court made the findings required for revocation of probation is a question of law, which we review de novo. *Modtland*, 695 N.W.2d at 605.

Hill argues that the district court's findings on the first factor—designating the conditions violated—are based on alleged violations that were not noticed or found before the remand, implicating his constitutional right to due process. For example, Hill contends, the district court's order references the probation officer's testimony at the hearing on remand that Hill had been dishonest with her about where he was living. Yet the state never provided Hill with notice of this alleged violation, and he did not admit to it.

The district court's order revoking probation does reference the probation officer's testimony, which the state used to supplement the record for the purpose of the remand. But the district court did not rely on the testimony to find that Hill had committed new, unnoticed probation violations. Instead, the district court found that Hill's admissions at the November 2018 hearing established by clear and convincing evidence that he had violated five specific conditions of his probation: that he failed to submit to random urinalysis testing, failed to abstain from the use of illegal drugs, failed to enter inpatient chemical-dependency treatment, failed to complete sex-offender treatment, and failed to maintain contact with probation. These findings, which mirror Hill's admissions to

violations that were noticed before the November 2018 hearing, satisfy the first *Austin* factor by designating the particular conditions violated.

Hill next argues that the district court abused its discretion because the record does not support the conclusion that Hill's violations were intentional or inexcusable. The second *Austin* factor requires a district court to find that a violation was inexcusable or intentional before revoking probation. *Id.* at 606. A violation may be excusable where there are "extenuating circumstances." *See State v. Johnson*, 679 N.W.2d 169, 177 (Minn. App. 2004). Hill argues that because his progress in treatment was stymied by a housing issue and a program that could not meet his needs, his failure to complete treatment was not intentional or inexcusable.

In finding that Hill violated his probation intentionally and without mitigating excuse, the district court acknowledged the explanations that Hill provided during the 2018 hearing. But citing to the probation officer's supplemental testimony, the district court went on to find:

[Hill] had the support of an experienced probation officer who was patient with his multitude of issues, including housing instability, financial pressures, chemical abuse, and the need for sex offender treatment. He fully understood the community based programming options available to him. Yet, [Hill] continued to violate his probation. The violations were repeated, following a significant jail sanction for same/similar violations. The violations were unquestionably intentional. The Court carefully considered [Hill's] explanations for the violations. [Hill's] explanation does not rise to mitigating excuses.

Because the district court found that the violations were intentional, and explained the basis for this conclusion, the district court's findings on the second *Austin* factor were sufficient.

Finally, Hill argues that the district court abused its discretion because the record does not support the conclusion that the need for confinement outweighed the policies favoring probation. He points out that the district court's findings suggest that the revocation was "reflexive," based on the nature of the underlying sex offense rather than the violations themselves or the availability of intermediate sanctions.

In considering the third *Austin* factor, a district court must be mindful that the purpose of probation is rehabilitation, and revocation should be a last resort. *Modtland*, 695 N.W.2d at 606. But the need for confinement outweighs the policies favoring probation if at least one of three subfactors is met:

- (i) confinement is necessary to protect the public from further criminal activity by the offender; or
- (ii) the offender is in need of correctional treatment which can most effectively be provided if he is confined; or
- (iii) it would unduly depreciate the seriousness of the violation if probation were not revoked.

Austin, 295 N.W.2d at 251 (quotation omitted).

Here, the district court's findings illustrate how the court balanced Hill's interest in remaining in the community and the state's interest in ensuring Hill's rehabilitation and public safety. The district court found that Hill's actions, "particularly his unwillingness and/or inability to comply with probation services," indicated that community-based programming was "no longer appropriate" and the need for confinement outweighed competing policies favoring probation. Given Hill's failure to succeed in community-based programs, the district court noted that treatment in confinement would be more effective. Based on Hill's discharge from various programs, his inability to sign on for

inpatient treatment, and his history of failing to comply with the terms of his probation, it was not unreasonable for the district court to conclude that community-based treatment had failed and that confinement was necessary. *See Austin*, 295 N.W.2d at 251 (stating that when a person “has been offered treatment but has failed to take advantage of the opportunity or to show a commitment to rehabilitation[,] . . . it [is] not unreasonable to conclude that treatment ha[s] failed”).

The district court also considered whether continued probation would depreciate the seriousness of the probation violation. In addressing this subfactor, the district court observed that continued probation would unduly depreciate the seriousness of the violation because Hill’s probation resulted from a downward dispositional sentencing departure. *See State v. Fleming*, 869 N.W.2d 319, 331 (Minn. App. 2015) (stating that, in deciding whether to revoke probation, a district court may consider the fact that the defendant received a downward dispositional departure), *aff’d*, 883 N.W.2d 790 (Minn. 2016). The district court’s findings were therefore sufficient to satisfy the third *Austin* factor.

In a well-written and thorough order, the district court made detailed findings on the *Austin* factors and explained how the facts supported those findings. The district court did not abuse its discretion in revoking Hill’s probation. *See Modtland*, 695 N.W.2d at 608.

Affirmed.