

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1457**

State of Minnesota,
Respondent,

vs.

Deontranelle Leslie Davis,
Appellant.

**Filed October 18, 2021
Affirmed
Florey, Judge**

Itasca County District Court
File No. 31-CR-16-398

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

Matti R. Adam, Itasca County Attorney, Justin J. Lee, Assistant County Attorney, Grand Rapids, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Christopher L. Mishek, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this appeal from the district court's order revoking his probation, appellant argues that the district court abused its discretion because it found that some of his probation

violations were inexcusable and that the need for his confinement outweighed the policies favoring continued probation. We affirm.

FACTS

Appellant Deontranelle Leslie Davis appeals from the district court's decision to revoke his probation. In 2016, Davis pleaded guilty to first- and fifth-degree criminal sexual conduct. The district court sentenced him to 172 months in prison, stayed execution of that sentence, and placed him on probation for ten years. The district court explained that it was following the plea agreement's recommendation for a downward dispositional departure because Davis was amenable to probation and sex-offender treatment.

From 2017 to 2020, Davis violated the terms of his probation seven times. Davis's probation officer reported the violation leading to Davis's probation revocation in this case on June 21, 2019. The report alleged that Davis failed to notify his probation officer of law-enforcement contact within 72 hours, failed to complete the recommended outpatient treatment program, and failed to comply with the "color code" drug-testing program. The report noted that Davis "simply doesn't follow through" with directives or programming as evidenced by his failure to comply with testing and aftercare recommendations and that his "adjustment to probation has been poor." The probation officer recommended that Davis be taken into custody and that his 172-month sentence be executed, pointing out that "[Davis] has been given numerous opportunities to prove he is amenable to supervision, but has failed."

On July 7, 2019, Davis was arrested for misdemeanor fleeing police by means other than a motor vehicle. Davis's probation officer submitted an addendum to the probation-

violation report alleging that Davis: committed a new offense, failed to submit to urinalysis drug testing when booked into jail, used marijuana, and failed to report law-enforcement contact to probation within 72 hours. In September 2019, Davis was charged with two felony counts of violating a domestic-abuse no-contact order (DANCO) by texting a protected party from jail.

At the probation-violation hearing, Davis admitted to failing to contact probation within 72 hours of law-enforcement contact. Davis also admitted to failing to comply with the recommended aftercare treatment program and the “color code” drug-testing program. However, Davis did not admit that these violations were “intentional and inexcusable.” Davis stated that he did not attend the aftercare program because he did not have a vehicle or a driver’s license. The district court granted the state’s request for a contested-violation hearing on these violations.

At the contested-violation hearing, Davis pleaded guilty to two felony counts of violating a DANCO by sending text messages to a protected party, and to a misdemeanor count of fleeing police. Davis also admitted to several probation violations, including: failing to report law-enforcement contact within 72 hours on two occasions; failing to comply with chemical-dependency-evaluation recommendations; failing to comply with “color code” drug testing; failing to remain law abiding; failing to submit to a urinalysis drug test in jail; and failing to refrain from the use of mood-altering substances. Davis stated that he did not have a good reason for his violations, and the district court found that the violations were “intentional and inexcusable.”

At a disposition hearing in August 2020, Davis admitted that he violated his probation on a number of occasions in the past and requested another opportunity on probation. Davis testified that after he completed chemical-dependency treatment he moved in with his grandmother, who lived about an hour away from the aftercare program, and that he did not have a valid driver's license or other means of transportation. Davis explained that his lack of transportation also caused him to miss some of the "color code" drug tests.

Regarding the new DANCO-violation conviction, Davis explained that the protected party left a voicemail on the jail message line and that he called her back because he was "feeling pretty depressed and sad at the time." He also explained that while he was in custody a doctor diagnosed him with anxiety and depression and prescribed him psychotropic medications for the first time. Davis stated that he felt better than ever from taking the medication and could now better comply with probation. He also stated that he could now access a vehicle and reinstate his license and that he was best served by inpatient chemical-dependency and/or mental-health treatment.

Davis's grandmother testified that she was the only person in the family who had a driver's license and was out of state for some of the time of Davis's probation. She explained her belief that Davis's chemical use was due to his mental illness, that the psychotropic medications were helping, and that she "absolutely" agreed that Davis would comply with his probationary conditions now that he was being treated for his mental illness.

The state argued that Davis's sentence should be executed because he failed to complete programming or comply with numerous other probationary conditions, has committed new offenses, and therefore, he is a "public safety risk." Davis's lawyer requested that probation be reinstated because his new violations and convictions were not serious enough to justify executing a 172-month sentence. The lawyer argued that although Davis was acting like a "knucklehead" for smoking marijuana and running away from law enforcement, he is not a public-safety risk. He also stated that probation had not addressed the underlying issue of Davis's mental illness.

The district court executed Davis's 172-month sentence, finding that his probation violations were "intentional and inexcusable." The district court noted that Davis had been given a downward dispositional departure and was afforded many opportunities on probation but continued to violate its terms. The district court stated:

And so in looking at the balance of this, the Court finds that really, the arguments that are made that your probation should not be revoked, that the Court doesn't find them to be compelling and I am finding that on balance, that the need for confinement in this case does outweigh the policy favoring probation. And for a couple of reasons.

First of all, this is necessary to protect the public from further criminal activity. You have continued to violate the law after even after having been placed on probation and it also unduly depreciates the seriousness of the violation if your probation is not revoked.

Again, this last round of violations are not the only violations since you received that downward dispositional departure. It was you had the five formal violations and sanction conferences before that. So the Court does find the violations to be serious and that it would unduly depreciate the seriousness of your ongoing violations if you're not revoked.

Davis appeals.

DECISION

The district court did not abuse its discretion by revoking Davis's probation.

Davis argues that the district court abused its discretion by determining that several of the violations were “intentional and inexcusable” when Davis did not have a means of transportation; by giving a sparse analysis of the reasons the need for confinement outweighed policies favoring probation; and by not explaining why treatment and programming in the community was no longer a viable option.

A district court has broad discretion in determining whether there is enough evidence to revoke probation and should be reversed only when there is a clear abuse of that discretion. *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). Whether a district court has made the required findings to revoke probation is a question of law, which this court reviews de novo. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005). If a district court determines that there is clear and convincing evidence that the probationer violated a condition of probation, or the probationer has admitted to a violation, the court may continue the probation under the original or modified conditions, or the court may revoke probation and execute the sentence. *State v. Cottew*, 746 N.W.2d 632, 636 (Minn. 2008) (citing Minn. R. Crim. P. 27.04, subd. 3(3)).

Before a district court revokes probation, it must consider the *Austin* factors by: (1) designating the specific condition of probation that was violated; (2) finding that the violation was intentional or inexcusable; and (3) finding that the need for confinement

outweighs the policies favoring probation. *Modtland*, 695 N.W.2d at 606 (quoting *Austin* 295 N.W.2d at 250).

Davis alleges the district court erred in its findings on the second and third *Austin* factors, stating that “[o]n the second factor, the record evidence showed that some of the violations were unintentional and excusable. On the third factor, the court erred because it merely recited two of the subfactors without stating the substantive reasons for revocation and the evidence relied upon.” Davis also argues that the district court “failed to engage in the necessary balancing under the third factor when it failed to address the policies favoring probation and Davis’s liberty interests.” We address both of the contested factors in turn.

The Second Austin Factor

Before revoking probation and sending a probationer to prison, the district court must find that the state proved by clear and convincing evidence that any probation violations were “intentional or inexcusable.” *Cottew*, 746 N.W.2d at 636. “A violation is mitigated where it was unintentional or excusable.” *Id.*; see also *Bearden v. Georgia*, 461 U.S. 660, 668-69, 103 S. Ct. 2064, 2071 (1983) (stating that where a violation is committed “through no fault of [the defendant’s] own,” the court should “consider[] whether adequate alternative methods of punishing the defendant are available” before revoking the defendant’s probation).

Davis admits that some of his probation violations were “intentional or inexcusable,” but argues that “it is impossible to know how much weight the [district court] placed” on the violations that he contends were not “intentional and inexcusable.”

Specifically, Davis points to violations that occurred because he did not have means of transportation, including that he failed to attend outpatient treatment and make his appointments for drug testing.

The record supports the district court's findings that Davis's probation violations were "intentional and inexcusable." Although Davis stated at two hearings that he did not have a means of transportation available to get to his aftercare program or drug testing, he also admitted that he violated both conditions and stated that he did not have "any good reason" for the violations. And although Davis presented testimony regarding his reasons for these violations, we defer to the district court's evaluation of the credibility of this evidence. *State v. Losh*, 694 N.W.2d 98, 102 (Minn. App. 2005), *aff'd*, 721 N.W.2d 886 (Minn. 2006). Thus, even if the district court placed significant weight on these two violations, Davis's own admission provided sufficient evidence that these violations were "intentional and inexcusable," and the district court did not abuse its broad discretion in finding that Davis's probation violations were "intentional and inexcusable." See *State v. Fritsche*, 402 N.W.2d 197, 201 (Minn. App. 1987) ("We will reverse a [district] court finding on grounds for revocation only in the case of a clear abuse of the [district court's] broad discretion in assessing the evidence.").

The Third Austin Factor

To find that the third *Austin* factor has been satisfied, the district court must find that the need for confinement outweighs the policies favoring probation. *Modtland*, 695 N.W.2d at 606. In making this finding, the district court is to consider whether: (1) confinement is needed to protect the public from further criminal activity;

(2) correctional treatment is necessary and can most effectively be provided during confinement; or (3) a further stay would unduly depreciate the seriousness of the violation (the *Modtland* subfactors). *Id.* at 607. The district court need only find the existence of one of these three subfactors to satisfy the third *Austin* factor. *See Goldman v. Greenwood*, 748 N.W.2d 279, 283 (Minn. 2008) (recognizing that appellate courts “normally interpret the conjunction ‘or’ as disjunctive rather than conjunctive”).

Relying on *Austin*, Davis contends that the district court’s findings on this factor are “more indicative of a reflexive revocation based largely on a history of technical violations and new convictions, rather than the result of thoughtful balancing and sound judgment.” *See Austin*, 295 N.W.2d at 251 (explaining that a district court’s decision to revoke 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”). Davis also argues that the district court abused its discretion by not addressing why mental-health and chemical-dependency treatment had failed or would be more effectively provided in prison.

Here, the district court made findings on two of the *Modtland* subfactors: that confinement is needed to protect the public from further criminal activity and that a further stay would unduly depreciate the seriousness of the violation. And although the district court did not explicitly address the remaining subfactors or Davis’s corresponding arguments, the record nevertheless demonstrates that the district court considered all of the arguments, both for and against revocation. *Cf. State v. Pegel*, 795 N.W.2d 251, 253-254 (Minn. App. 2011). Our review of the record shows that the district court made sufficient

findings by considering the initial downward dispositional departure, the numerous violations of probation, and the misdemeanor and felony charges that occurred during Davis's probation. These findings are sufficient to satisfy two of the *Modtland* subfactors and the third *Austin* factor. A finding on one of the subfactors would have been sufficient. Therefore, the district court did not abuse its discretion in making these findings and revoking Davis's probation.

Affirmed.