

*This opinion is nonprecedential except as provided by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
A21-0019**

State of Minnesota,
Respondent,

vs.

Ross William Bryniarski,
Appellant.

**Filed July 26, 2021
Affirmed
Reilly, Judge**

Morrison County District Court
File No. 49-CR-18-1930

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

Brian J. Middendorf, Morrison County Attorney, Little Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Reilly, Judge; and Bryan,
Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

In this direct appeal from the order revoking his probation, appellant argues that the
district court abused its discretion in revoking his probation by determining the need for

his confinement outweighed the policies favoring his continued probation. Because the district court did not abuse its discretion when it revoked appellant's probation, we affirm.

FACTS

In December 2018, respondent State of Minnesota charged appellant Ross William Bryniarski in a criminal complaint with felony violation of a harassment restraining order (HRO) for having contact with the protected person in violation of the HRO. In February 2020, appellant entered a plea of guilty to the charged count. The district court sentenced appellant to a downward dispositional departure of a 24-month commitment to the department of corrections with imposition stayed for five years, and placed appellant on supervised probation for five years. As conditions of his probation, the district court required that appellant remain law abiding, not use or possess alcohol or nonprescribed controlled substances, and submit to chemical testing as directed by probation.

Six days after the sentencing hearing, probation filed a violation report alleging appellant had violated the terms of his probation by failing to remain law abiding and using controlled substances. The report specified that the state charged appellant in a criminal complaint with domestic assault and damage to property for conduct that occurred just one day after the district court granted a downward departure and placed him on probation, and that appellant admitted to law enforcement during his arrest that he had used methamphetamine. Police reports from the incident describe that appellant had "struck" his mother "in the face under her chin" while at her home.

Appellant then underwent a chemical dependency evaluation which recommended, among other things, that he complete a residential treatment program, submit to random

testing, and not use alcohol or nonprescribed controlled substances. About a month after his evaluation, probation filed an addendum to the violation report alleging appellant failed to follow the evaluation recommendations by being discharged as unsuccessful from his treatment program, failing to submit to random testing, and using methamphetamine and THC.

The district court held a revocation hearing. Appellant admitted to violating the conditions of his release by using methamphetamine, not completing treatment, and not submitting to random testing. The district court then revoked appellant's probation and executed his 24-month prison sentence. The district court determined that appellant violated the conditions of his probation, that his violations were intentional and inexcusable, and that the need for confinement outweighed the policies favoring probation.

This appeal follows.

DECISION

Before revoking probation, the district court must “1) designate the specific condition or conditions that were violated; 2) find that the violation was intentional or inexcusable; and 3) find that need for confinement outweighs the policies favoring probation.” *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). “The purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed.” *Id.* “The [district] court has broad discretion in determining if there is sufficient evidence to revoke probation,” and appellate courts will reverse only “if there is a clear abuse of that discretion.” *Id.* at 249-50. Whether the district court made the required

findings to revoke probation is a question of law, which we review de novo. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

Appellant does not challenge the district court's findings on the first and second *Austin* factors. He challenges only the third *Austin*-factor finding, arguing the need to confine him does not outweigh the policies favoring probation.

The district court determined that the need for confinement outweighed the policies favoring probation under the third *Austin* factor. When evaluating this factor, the district court must make *Modtland* findings by “balanc[ing] the probationer’s interest in freedom and the state’s interest in insuring his rehabilitation and the public safety.” *Id.* at 607 (quotation omitted). The district court considers whether “(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.” *Id.* (quotation omitted). Only one subfactor is necessary to support revocation. *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”). The district court found that the first and third subfactors supported revocation. The record supports these findings.

As for the first subfactor, appellant’s confinement is necessary to protect the public from further criminal activity. The record establishes that less than a week after being placed on probation, appellant was charged with assaulting his mother and had methamphetamine in his system. The record also establishes that appellant failed to

complete the recommended treatment program and submit to random testing. The district court found based on this record that the “seriousness of [appellant’s] violations and the blatant rejection of the Court’s direction and orders indicates” that appellant is “simply not going to be compliant with the Court’s orders or the directions of [appellant’s] agent.” The record supports the district court’s finding that confinement is necessary to protect the public from further criminal activity.

As for the third subfactor, declining to revoke probation would unduly depreciate the seriousness of appellant’s violations. After the first violation report in August 2020, the district court warned appellant that it would “not . . . tolerate [appellant] walking out of this courtroom and a day or two later being right back in here getting in legal trouble” and that appellant would “go sit in prison if it is proven that [appellant had] done that.”

Appellant argues that the district court’s warning him of the consequences of future violations shows that the decision to revoke probation was impermissibly “reflexive.” The supreme court stated in *Austin* that the “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.” *Austin*, 295 N.W.2d at 251 (quotations omitted). But here, the district court gave specific reasons based on the record explaining its *Austin* and *Modtland* findings that the need for confinement outweighed the policies favoring probation. When the district court reviewed the addendum to the violation report in September 2020, the district court found that not revoking probation “would unduly depreciate the seriousness of the violations” because appellant had “multiple violations” following the initial violation report, which suggested

“that [appellant] [isn’t] going to comply with probationary terms, and [appellant will] continue to be noncompliant.” The record supports this finding. The findings were not a reflexive reaction to appellant’s violations and instead stemmed from appellant’s failure in treatment, continued use of controlled substances, and enduring noncompliance with the district court’s orders.

Because the record supports the district court’s factual findings, and because the district court made the findings required by *Austin* and *Modtland* to revoke probation, we conclude that the district court did not abuse its discretion when it revoked appellant’s probation and executed his sentence.

Affirmed.