

*This opinion is nonprecedential except as provided by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
A21-0276**

State of Minnesota,
Respondent,

vs.

Robert Leake,
Appellant.

**Filed November 1, 2021
Affirmed
Slieter, Judge**

Stearns County District Court
File No. 73-CR-18-8107

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

Janelle P. Kendall, Stearns County Attorney, Brianna K. Long, Assistant County Attorney,
St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this appeal from the district court's order revoking his probation, appellant argues that the district court abused its discretion because it made insufficient findings to conclude that the need for his confinement outweighed the policies favoring continued probation.

Because the district court made specific findings, which are supported by the record, that it would unduly depreciate the seriousness of the violation if probation were not revoked, we affirm.

FACTS

Appellant Robert Leake pleaded guilty to felony driving while impaired (DWI) chemical-test refusal in January 2020, his seventh DWI. At sentencing, the district court granted appellant's request for a downward dispositional departure, stayed execution of a 64-month prison sentence, and placed appellant on supervised probation for seven years. Among his probation conditions, appellant was ordered to abstain from the use of alcohol, as well as all mood-altering chemicals, and submit to testing for such use.

Soon after sentencing, appellant's probation agent reported to the district court that appellant violated his probation by failing to submit to alcohol testing on two consecutive days and subsequently tested positive for alcohol. Appellant appeared in court, waived his right to a contested hearing, and admitted the violations. Appellant requested that the district court impose an intermediate sanction of 57 days in jail, which he already served, and allow him to remain on probation. The state sought revocation of probation and execution of the stayed prison sentence.

The district court found that appellant had committed the violations and, after accepting testimony and arguments with respect to disposition, revoked appellant's probation and executed his 64-month prison sentence. This appeal follows.

DECISION

Appellant argues that the district court abused its discretion in revoking his probation because the district court failed to make the required findings that the need for confinement outweighs the policies favoring probation.

“The [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.” *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). To revoke probation, a district court must find that (1) the probationer violated a specific condition of probation; (2) the violation was intentional or inexcusable; and (3) the need for confinement outweighs the policies favoring continued probation. *Id.* at 250; *see also State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005) (explaining that the district court must make specific findings on all three *Austin* factors to revoke probation). Appellant only challenges the district court’s findings on the third *Austin* factor. We review whether a district court made the required *Austin* findings *de novo*. *Modtland*, 695 N.W.2d at 605.

In addressing the third *Austin* factor, the supreme court has directed district courts to “balance the probationer’s interest in freedom and the state’s interest in insuring his rehabilitation and the public safety.” *Id.* at 606-07 (quotation omitted). The district court must bear in mind that “the purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed.” *Id.* at 606 (quotation omitted). In deciding whether to revoke probation, a district court should consider 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. at 607 (quotation omitted).

The district court made sufficient findings regarding the third *Modtland* subfactor to support its decision to revoke appellant's probation. The district court found that appellant disregarded his probation "almost from the get-go" and "then basically continued to blow off probation" resulting in him failing to submit to two alcohol monitoring tests and failing to abstain from alcohol. It was "very clear" appellant was "ordered to abstain" from alcohol as this was "a felony DWI. . . . Fortunately, [appellant is] not here on a violation regarding any new [DWI] offenses, but it is a public safety concern." The district court concluded that appellant is "not amenable to probation" in part because he was offered treatment but did not take advantage of it until it appeared that he might go to prison. The district court also found that because appellant violated the order to abstain from the use of alcohol, "to do anything other than [execute his] sentence would tend to diminish the seriousness of the violation."

Appellant argues, citing *Modtland*, that the district court simply recited the three *Austin* factors and offered general non-specific reasons for the revocation. We disagree. As the record demonstrates, the district court made detailed findings regarding the third *Modtland* subfactor and, consequently, satisfied the third *Austin* factor. Therefore, the district court did not abuse its discretion.

Affirmed.