

*This opinion is nonprecedential except as provided by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
A21-0683**

State of Minnesota,
Respondent,

vs.

Vincent Eric Kraven,
Appellant.

**Filed December 27, 2021
Affirmed
Cleary, Judge***

St. Louis County District Court
File No. 69DU-CR-11-690

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

Kimberly J. Maki, St. Louis County Attorney, Kristen E. Swanson, Assistant County Attorney, Duluth, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Jesson, Judge; and Cleary, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

CLEARY, Judge

Appellant challenges the district court's revocation of his probation, arguing that the district court failed to make adequate findings and, consequently, abused its discretion by revoking his probation. We affirm.

FACTS

In 2011, appellant Vincent Eric Kraven pleaded guilty to second-degree criminal sexual conduct. The district court granted appellant a dispositional departure from the 255-month presumptive sentence for second-degree criminal sexual conduct and stayed execution of that sentence for ten years.

At the time of his guilty plea, appellant also had two probationary sentences. The district court found that appellant violated both probationary sentences by failing to remain law abiding, but it stayed these sentences. The district court then placed appellant on probation and ordered him to serve one year in jail.

In 2014, appellant admitted to violating his probation by using alcohol, failing to complete a sex-offender-treatment program, and failing to be truthful to his probation officer. The district court executed his two previously stayed probationary sentences while again staying the execution of the sentence for the second-degree criminal-sexual-conduct offense.

In May 2020, respondent State of Minnesota charged appellant with felon-in-possession of a firearm and reckless discharge of a firearm. Pursuant to an agreement between appellant and the state, appellant pleaded guilty to the

felon-in-possession-of-a-firearm offense with the understanding that the reckless-discharge offense would be dismissed and that he could move for a downward dispositional departure at the sentencing hearing. The district court accepted appellant's guilty plea and found that appellant violated his probation by failing to remain law abiding by possessing a firearm. The district court also allowed the state to pursue other alleged probation violations at a contested hearing should it choose to do so.

In February 2021, a contested probation-violation hearing was held on the remaining probation violations. The district court found that appellant violated seven conditions of his probation and dismissed the remaining violation.¹ Appellant moved for a downward dispositional departure, and the district court scheduled a joint hearing on sentencing and disposition of appellant's probation violations.

At the joint hearing, appellant's attorney and the county attorney presented arguments. The probation officer testified and recommended executing appellant's felon-in-possession and criminal-sexual-conduct sentences. Appellant also testified.

On the issue of probation revocation, appellant's counsel highlighted appellant's history of mental health issues and a traumatic brain injury (TBI) that he sustained in 2014. She presented evidence that he completed sex-offender treatment and rehabilitative mental

¹ The district court accepted appellant's admissions that he: (1) failed to remain law abiding; (2) possessed a deadly or dangerous weapon; (3) failed to report to his probation officer; and (4) possessed mood-altering substances. It also found that the state proved the following violations: (1) failure to cooperate with and be truthful to his probation officer; (2) failure to comply with additional requirements imposed by his probation officer; and (3) possessing mood-altering substances (on another occasion). It dismissed the alleged violation that appellant failed to submit to an unannounced visit.

health services. She emphasized that he showed rehabilitation regarding the criminal-sexual-conduct offense and argued that appellant's success surrounding his sex-offender treatment suggested that his treatment needs could be effectively addressed as probation conditions.

As to the departure motion, appellant's attorney again highlighted his TBI. She stressed that the firearm offense occurred during the COVID-19 pandemic and that appellant "lacked substantial capacity" when he committed the offense. She noted that appellant was accepted into an inpatient treatment program and argued that appellant had shown a particular amenability to probation, justifying a dispositional departure.

The county attorney argued that appellant was not amenable to probation because he committed several serious crimes while on probation and there is no exceptional circumstance warranting departure.

The district court denied appellant's motion for a dispositional departure and revoked his probation. Addressing the dispositional departure first, the district court found that appellant was given a departure and placed on probation but, even so, his record on probation was "horrible." The district court determined that appellant's TBI did not correlate to the current offense because his TBI and significant mental health issues predated the felon-in-possession offense by over a year. The district court also found that, even if there were another treatment program that had an opening for appellant, he had already been through a treatment program and continued to violate his probation. The court found that appellant was not amenable to probation and it denied the departure. It sentenced him to 60 months' imprisonment for the felon-in-possession charge.

Addressing the probation revocation next, the district court found that appellant's violations were intentional and inexcusable, and it revoked appellant's probation and executed his 255-month sentence. This appeal follows.

DECISION

I.

Appellant challenges the district court's order revoking his probation, arguing that the district court failed to make adequate findings supporting its decision because it failed to address the factors required under *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

We review the district court's probation revocation decision for an abuse of discretion. *State v. Fleming*, 869 N.W.2d 319, 331 (Minn. App. 2015), *aff'd on other grounds*, 883 N.W.2d 790 (Minn. 2016). But we review de novo whether the district court supported its decision with adequate findings. *Modtland*, 695 N.W.2d at 605.

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 the need for confinement outweighs the policies favoring probation." *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). The district court must make adequate fact-specific findings to enable review, and it may not rely on a general recitation of the *Austin* factors. *Modtland*, 695 N.W.2d at 608.

In addressing the third *Austin* factor, the district court should consider "the original offense and the intervening conduct" that supports revocation. *Id.* at 607. The district court should also consider whether (1) "confinement is necessary to protect the public from

further criminal activity”; (2) “the offender is in need of correctional treatment [that] can most effectively be provided if he is confined”; or (3) “it would unduly depreciate the seriousness of the violation if probation were not revoked.” *Id.* (quotation omitted) (discussing what have become known as the *Modtland* factors). Therefore, the question that we must answer 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.* at 608. We conclude that it did.

Appellant argues that the district court’s findings in support of the third *Austin* factor are inadequate, and so its decision to execute his stayed sentence was an abuse of discretion. Appellant contends that, although the district court made extensive findings when addressing his motion for a downward dispositional departure, its findings on his probation revocation were inadequate because they were limited to a single paragraph. Although appellant concedes that the downward dispositional findings “relate generally” to the need for his confinement, he nevertheless asserts that the district court needed “to go a step further and weigh that need against the policies in favor of probation” by making findings on at least one of the *Modtland* factors.

Although the better practice would be for the district court to make substantive findings using language from the *Modtland* factors, we conclude that the district court’s reasoning here is sufficient. The district court conveyed its substantive reasons for revocation, those reasons show that it was necessary to confine appellant to protect the public, and we did not need to “scour the record” to understand the district court’s

reasoning. *See id.* 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.”).

As appellant concedes, the district court’s extensive findings relating to his downward departure motion “relate generally to the need to confine [appellant],” and we also infer from those findings that the district court determined it was necessary to confine appellant in order to protect the public. The district court highlighted appellant’s “horrible” probation record, repeated probation violations despite his participation in an intensive outpatient treatment program, and his multiple felon-in-possession-of-firearm offenses. Because these findings have record support and show that appellant’s confinement is necessary to protect the public, the district court satisfied its duty to address the third *Austin* factor.

II.

Appellant also argues that revocation of his probation should be reversed because the need for confinement does not outweigh the policies favoring probation. He contends that the district court abused its discretion because he is amenable to treatment and because intermediate sanctions were available.

A district court may revoke probation if the probationer violates any of the probation conditions. Minn. Stat. § 609.14, subd. 1(a) (2020). But its decision must not be “a reflexive reaction to an accumulation of technical violations.” *Austin*, 295 N.W.2d at 251 (quotation omitted). A technical violation is “any violation of a court order of probation, except an allegation of a subsequent criminal act that is alleged in a formal complaint, citation, or petition.” Minn. Stat. § 244.196, subd. 6 (2020).

Appellant's probation violations were not technical violations. Instead, he violated the terms of his probation by failing to remain law abiding. The state presented evidence that appellant possessed a sawed-off shotgun, and this prompted a formal felony charge for felon-in-possession-of-a-firearm. Because appellant's probation violations were serious violations, the district court's decision was not a "reflexive reaction," rather, it was based on evidence that appellant's behavior shows he "cannot be counted on to avoid antisocial activity." *Austin*, 295 N.W.2d at 251 (quotation omitted).

The district court found that, although appellant may be amenable to an inpatient treatment program, he has already been through multiple treatment programs and has violated his probation multiple times. This finding is supported by the record, which shows that, although appellant completed four chemical dependency treatment programs by 2012, in 2014 he violated his probation by drinking alcohol and failing to remain law abiding. The record also reflects that appellant completed sex-offender treatment in May 2018 and another chemical dependency treatment program in September 2019, but he violated his probation in May 2020 by possessing and discharging a firearm and by violating seven additional conditions of his probation. Appellant's extensive criminal history and frequent probation violations support the district court's finding that he is not amenable to probation. The district court therefore did not abuse its discretion in making this finding.

Appellant finally argues that the district court abused its discretion because intermediate sanctions were available. He contends that, because the district court previously imposed an intermediate sanction in 2014 when it executed the 60-month sentence for the felon-in-possession of a firearm while continuing to stay his

criminal-sexual-conduct sentence, the district court should have imposed a similar intermediate sanction here. But appellant does not point to any authority that a district court *must* impose intermediate sanctions when available. The authority appellant cites, *State v. Cottew*, does not hold that intermediate sanctions are required, it only discusses that intermediate sanctions may be imposed in certain situations. 746 N.W.2d 632, 637 (Minn. 2008); *see also* Minn. Stat. § 609.14, subd. 3 (2020) (The district “court *may* . . . order intermediate sanctions.” (emphasis added)). But here, the district court found that rehabilitation is not still possible because, despite considerable resources used to rehabilitate appellant, he has violated his probation many times. And the district court already imposed the intermediate sanction that appellant now requests. On this record, the district court did not abuse its discretion by revoking appellant’s probation.

Affirmed.