STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1120

State of Minnesota,
Respondent,

vs.

Curt Matthew Craven,
Appellant.

Filed April 11, 2022
Affirmed
Gaïtas, Judge

Douglas County District Court
File No. 21-CR-19-356

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

Chad Larson, Douglas County Attorney, Alexandria, Minnesota (for respondent)

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

Considered and decided by Frisch, Presiding Judge; Gaïtas, Judge; and Smith, John, Judge.*

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

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Curt Matthew Craven appeals from the district court's revocation of his probation. He argues that the district court failed to make the required findings before revoking his probation and that the record does not support the district court's decision. We affirm.

FACTS

In March 2019, Craven was arrested for driving with a cancelled driver's license and marijuana was found in his possession. Craven believed that the arresting officer had sexually harassed him in connection with an earlier arrest. Based on this belief, Craven swore at and threatened the officer on the way to the jail. He continued to threaten the officer during recorded phone calls with his family from jail.

As a result of this conduct, Craven was charged with threats of violence, Minn. Stat. § 609.713, subd. 1 (2018), driving after cancellation-inimical to public safety, Minn. Stat. § 171.24, subd. 5 (2018), possession of marijuana in a motor vehicle, Minn. Stat. § 152.027, subd. 3 (2018), disorderly conduct, Minn. Stat. § 609.72, subd. 1(3) (2018), and possession of drug paraphernalia, Minn. Stat. § 152.092(a) (2018).

Craven entered into a plea agreement with respondent State of Minnesota. He pleaded guilty to threats of violence in exchange for a downward dispositional departure from the sentencing guidelines and dismissal of the remaining counts. Following the terms of the parties' agreement, the district court stayed execution of 30 months' imprisonment and placed Craven on probation for five years. The district court ordered Craven to "follow

all of the general terms and conditions of probation" and required him to complete a chemical-use assessment "within the next 45 days."

Approximately five months later, Craven's probation officer alleged that Craven had violated six different conditions of probation and obtained a warrant for his arrest. When Craven turned himself in on the warrant, a preliminary breath test showed that he had a 0.127 alcohol concentration. The probation officer added two new violations to her probation-violation report.

At his first appearance on the probation violation, Craven demanded a contested hearing. Shortly after the first appearance, Craven's probation officer submitted a letter to the district court expressing concern about a text message she had received from Craven. The text message included a veiled threat to one of the probation officer's family members.

Craven subsequently waived a contested probation-revocation hearing and admitted to three alleged violations of his probation: failure to complete a chemical-use assessment, failure to provide his probation officer with a current address, and failure to abstain from alcohol. During the hearing, he explained that the violations occurred because he was "moving around," caring for his daughter, running a company with four employees, and "it just got hectic." He clarified that he had scheduled a chemical-use assessment, but it was cancelled due to COVID-19 and he never rescheduled. The district court found that Craven "made a knowing, voluntary, and intelligent waiver of [his] rights," that he "provided sufficient facts to support [his] admission[s]," and that "[t]he violations were intentional and inexcusable."

Then, the parties presented arguments regarding the appropriate disposition for the violations. The probation officer and the prosecutor asked the district court to revoke Craven's probation and execute his sentence. According to the probation officer, Craven was not amenable to probation because he had not "made himself available for supervision." She also remarked on Craven's pattern of intimidating conduct, including his text message, other threats to her family, and requests to have her investigated. The prosecutor observed that Craven's veiled threats and intimidation tactics were "consistent with his conduct in past cases," and stated that "[h]e has a problem with authority, he has a problem with being told what to do, and so clearly . . . he's not amenable to probation." Additionally, the prosecutor referenced Craven's 12 prior felony convictions, noting that "all but three of them [resulted in] either commits or subsequently-executed sentences through probation violations." Craven, who was represented by counsel, sought a 30-day jail sanction and continued probation. He acknowledged his mental-health and chemical-dependency issues and requested help with those issues through continued probation.

The district court concluded that Craven was not amenable to probation and that confinement was necessary. Based on this finding, the district court revoked Craven's probation and executed his 30-month prison sentence.

Craven appeals.

DECISION

Craven argues that the district court erred in revoking his 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). But whether the district court made the findings required 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).

In *Austin*, the Minnesota Supreme Court directed district courts to consider three factors (the *Austin* factors) before revoking probation and to make specific findings on each of these factors. *Austin*, 295 N.W.2d at 250. A 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." *Id.* The third factor requires a district court to further consider several subfactors, specifically 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 251. District courts must clearly address the three *Austin* factors and not merely recite them or give "general, non-specific reasons for revocation." *Modtland*, 695 N.W.2d at 608. And district courts must be cognizant of the fact that "the purpose of probation is rehabilitation and revocation should be used only as a last resort [if] treatment has failed." *Id.* at 606 (quotation and citation omitted).

Craven challenges the district court's decision on the third *Austin* factor. He argues that, although the district court cited two subfactors supporting its decision, it did not adequately explain how Craven's conduct implicated those subfactors. Thus, Craven

contends, the district court abused its discretion in concluding that the need for confinement outweighed the policies favoring probation.

In addressing the third *Austin* factor, the district court stated:

> I don't know that there is any treatment that could be provided for you in the community based on your lack of amenability to probation. It's quite clear to me that based on the information from [the probation officer], as well as information from [the prosecutor], that you are just not amenable to probation. Is that lack of amenability enough to mean that you go to prison? In light of the treatment that you need and not being able to be supervised, not providing your address, not providing your whereabouts, not following through with a chemical use assessment, thousands of people during Covid were ordered to get chemical use assessments and managed to do that and you admittedly did not. If this were simply an issue of a relapse or one chemical use, I would reinstate you, but that's not the case. You are in need of correctional treatment which can most effectively be provided during an extended period of confinement. I think that to do anything other than to commit you to the Commissioner of Corrections would unduly depreciate the seriousness of these violations. You can't be helped if you are not willing to submit to supervision. You have to be able to work with the agent. And the information I have before me is that neither of those are happening now.

Craven first argues that the district court did not elucidate why continuing his probation would unduly depreciate the seriousness of his violations. We disagree. The district court noted significant probation violations, including Craven's failure to notify his probation officer of his whereabouts or to provide his address. It also observed that he was "not willing to submit to supervision." These findings sufficiently explain the district court's determination that continued probation would unduly depreciate the seriousness of Craven's violations, which essentially amounted to a complete failure to participate in probation.

Craven also challenges the district court's determination that he requires correctional treatment. Again, however, the district court identified facts supporting this finding. It pointed out that Craven failed to complete a chemical-use assessment as ordered. And the district court remarked on Craven's complete failure to comply with probation during his five months of supervision. The district court stated that Craven's violations were not simply "a relapse or one chemical use." Rather, they showed his unwillingness to participate in probation. These facts support the district court's determination that Craven is "in need of correctional treatment which can most effectively be provided during an extended period of confinement."[1]

A district court may revoke probation upon proof of only one of the subfactors. *Austin*, 295 N.W.2d at 251. Here, the district court based its decision on two subfactors. Given the rationale provided by the district court, including its findings regarding those two subfactors, we are satisfied that it fully considered whether the need for confinement outweighed the policies favoring probation. We therefore reject Craven's argument that the district court failed to properly consider the third *Austin* factor.

Alternatively, Craven argues that, even if the district court's analysis was sufficient, the record does not support its decision to revoke his probation. He contends that he "took

[1] Craven relies on several nonprecedential opinions where this court reversed based on insufficient consideration of the third *Austin* factor. But we are not bound by nonprecedential opinions. *See Jackson ex rel. Sorenson v. Options Residential, Inc.*, 896 N.W.2d 549, 553 (Minn. App. 2017) ("[W]e are bound by precedent established in the supreme court's opinions and our own published opinions."). Nonetheless, we have reviewed the cases cited and conclude that they are factually distinguishable from the circumstances in Craven's case.

full responsibility for his conduct" by turning himself in on the warrant and "readily admitted [to the] violations at the outset of his hearing." Moreover, he points out that "he had not yet received, let alone exhausted, community-based treatment."

"[A] district court has broad discretion in determining whether there is sufficient evidence to revoke probation." *State v. Cottew*, 746 N.W.2d 632, 636-37 (Minn. 2008). If the district court's findings on the *Austin* factors are supported by the record, the district court can exercise its discretion to revoke an individual's probation. *Modtland*, 695 N.W.2d at 608. Based on our careful review of the record, we conclude that the district court acted within its discretion by revoking Craven's probation after making findings on the *Austin* factors.

Affirmed.