STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0446

State of Minnesota,
Respondent,

vs.

Sean Douglas English,
Appellant.

Filed November 28, 2022
Reversed and remanded
Bjorkman, Judge

Beltrami County District Court
File No. 04-CR-14-1824

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

David Hanson, Beltrami County Attorney, Michael V. Mahlen, Assistant County Attorney, Bemidji, Minnesota (for respondent)

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

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

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges the revocation of his probation and execution of his prison sentence for impaired driving. Because the district court did not make the required findings as to whether the need for confinement outweighs the policies favoring probation, we reverse and remand.

FACTS

In October 2014, appellant Sean Douglas English pleaded guilty to first-degree driving while impaired. The district court imposed a stayed 48-month prison sentence and placed English on probation for seven years. Among the probation conditions, the district court ordered English to follow the terms and conditions set out by his probation agent; abstain from the use, possession, or purchase of mood-altering substances; submit to random chemical testing; and remain law-abiding.

In May 2019, English violated his probation for the first time, testing positive for methamphetamine. English admitted the violation. The district court reinstated his probation but imposed 15 days in jail as a sanction. The court also ordered English to complete an updated chemical-dependency assessment and to follow its recommendations.

In February 2021, English violated his probation for the second time. He told his probation agent that he had "a couple drinks" with an acquaintance who was staying in his home. English admitted the violation. The district court again reinstated his probation and ordered him to complete an updated chemical-dependency assessment, continue working

with mental-health staff, and inform his agent within 72 hours of any change to his employment, address, or telephone number.

In October 2021, English violated his probation for the third time. The probation-violation report alleged that English (1) failed to report to his agent in May, June, July and September 2021; (2) did not complete a chemical-dependency assessment; (3) violated the law by driving after revocation of his driver's license and possessing drug paraphernalia in North Dakota; and (4) did not timely notify his agent of his arrests.

At his January 2022 probation-violation hearing, English admitted the violations. He explained that he thought he was "off-paper" and that he had been struggling to get his mail. The district court rejected his explanations, finding the violations were intentional and inexcusable. The court also found that English was not amenable to probation, noting the number and nature of his violations (including new offenses) over the course of his probation. The court concluded by stating, "Mr. English, if I do not revoke the stay of execution in this matter, then I feel that I am diminishing the work of probation, the benefits of probation. And so the reasons of confinement do outweigh those efforts in this matter." The district court revoked English's probation and executed his 48-month prison sentence. English appeals.

DECISION

A district court may revoke an offender's probation if it finds that the offender (1) violated a specific condition or conditions of probation, (2) the violation was intentional or inexcusable, and (3) the need for confinement outweighs the policies favoring probation. *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). The *Austin* framework requires courts

to not only recite the three factors but to "seek to convey their substantive reasons for revocation and the evidence relied on." *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005). "This process prevents courts from reflexively revoking probation when it is established that a defendant has violated a condition of probation." *Id.*

A district court has broad discretion to determine whether to revoke probation. *Austin*, 295 N.W.2d at 249-50. But whether the district court made the requisite findings is a question of law, which we review de novo. *Modtland*, 695 N.W.2d at 605.

English argues that the district court did not make the required findings on the third *Austin* factor—whether the "need for confinement outweighs the policies favoring probation." *Austin*, 295 N.W.2d at 250. This argument has merit. Examination of the third factor requires the district court to "balance the probationer's interest in freedom and the state's interest in insuring his rehabilitation and the public safety." *Modtland*, 695 N.W.2d at 607 (quotation omitted). In doing so, the court must 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. (quoting *Austin*, 295 N.W.2d at 251). If the district court does not make findings on any of these three subfactors, we will reverse and remand for further findings. *See id.* at 608.

As noted above, the district court made minimal findings regarding the need for confinement and the policies favoring probation:

> I am finding that you are not amenable to probation; that your—I am accepting your admissions here today and also accepting the fact that those were intentional—and finding that they are intentional and inexcusable.
>
> . . . .
>
> I am further noticing the length of time this manner has been—length of time of probation of this case.
>
> Mr. English, if I do not revoke the stay of execution in this matter, then I feel that I am diminishing the work of probation, the benefits of probation. And so the reasons of confinement do outweigh those efforts in this matter.

We conclude that the district court did not make the required findings to support revoking English's probation. The district court's finding that English is "not amenable to probation" does not explain why the district court made that determination or the evidence it relied on in doing so. It is the kind of "general, non-specific reasons for revocation" that our supreme court concluded did not satisfy *Austin*. *Id.* The court's findings do not state that confinement is necessary to protect the public or to provide correctional treatment. And even if we construe the district court's statements about diminishing the work of probation as a finding regarding the third subfactor—the relative weight of the policies favoring probation—they do not explain how failing to revoke probation will depreciate the seriousness of English's violations. In short, the district court did not make the required findings on the third *Austin* factor.

The state contends that we can affirm because the record contains "substantial evidence" supporting the revocation of English's probation. But "it is not the role of

appellate courts to scour the record to determine if sufficient evidence exists to support the district court's revocation." *Id.*

Because the district court did not make adequate findings on the third *Austin* factor, we reverse the revocation of English's probation and remand for further findings based on the existing record.

Reversed and remanded.