

*This opinion is nonprecedential except as provided by  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  
A23-0306**

State of Minnesota,  
Respondent,

vs.

Sean Douglas English,  
Appellant.

**Filed September 5, 2023  
Affirmed  
Wheelock, Judge**

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

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

David L. 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 Wheelock, Presiding Judge; Cochran, Judge; and Frisch, Judge.

**NONPRECEDENTIAL OPINION**

**WHEELOCK**, Judge

Appellant challenges a probation-revocation decision, arguing that the district court abused its discretion when it found that the need for appellant's confinement outweighed the policies favoring probation. We affirm.

## FACTS

The following facts summarize the record, including transcripts of the plea, sentencing, and probation-revocation hearings. In October 2014, appellant Sean Douglas English pleaded guilty to a June 2014 offense of first-degree driving while impaired (DWI) under Minn. Stat. § 169A.24, subd. 1(1) (2012). English's prior offenses included DWIs in 2005, 2011, and 2012. The district court sentenced English to 48 months in prison, stayed for seven years.

English incurred no probation violations until 2019, when he admitted to using methamphetamine and the district court sanctioned him with 15 days of jail time and reinstated his probation. He admitted to a second violation in 2021 for consuming alcohol around the time his apartment was destroyed by fire, after which the district court reinstated English's probation without imposing intermediate sanctions and ordered him to complete an updated chemical-dependency assessment and follow its recommendations.

At a hearing in January 2022, English admitted to four additional probation violations: (1) failure to report to his probation agent in May, June, July, and September 2021; (2) failure to complete the chemical-dependency assessment ordered by the district court; (3) failure to remain law abiding, which included a March 2021 North Dakota conviction for unlawful possession of drug paraphernalia and an August 2021 Minnesota conviction for driving with a suspended license; and (4) failure to notify his probation agent of his 2021 convictions. English explained that he did not report the 2021 convictions to his probation agent because he thought he was "off paper," meaning no longer on probation. He also told the district court that he did not complete the chemical-dependency

evaluation because he had lost his apartment and struggled to find a new home, saying, “I was just like bouncing, trying to find places.” A community-services representative attended the hearing and told the district court that English had received mental-health services the previous summer and that English now had stable housing that he likely would lose if the district court were to execute his prison sentence.

The district court found English was not amenable to probation and executed the 48-month prison sentence. English appealed, and we reversed and remanded to the district court for consideration of the third *Austin* factor. *State v. English*, No. A22-0446, 2022 WL 17244591, at \*2 (Minn. App. Nov. 28, 2022) (citing *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980)). The district court revoked English’s probation the next day in a written order. English appeals.

## **DECISION**

A district court may revoke probation if the probationer violates any condition of that probation. Minn. Stat. § 609.14, subd. 1(a) (2022). “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.” *Austin*, 295 N.W.2d at 249-50. “The ultimate decision whether to order revocation and imprisonment lies solely within the district court’s discretion.” *State v. Fortner*, 989 N.W.2d 368, 377 (Minn. App. 2023). “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). Even if another district court, in the proper exercise of its discretion, could have made a different ruling on the same facts, that does not mean

that the district court abused its discretion in the present matter. *State v. Blom*, 682 N.W.2d 578, 613 (Minn. 2004).

A district court considers three factors when determining whether to revoke probation following a violation. *Austin*, 295 N.W.2d at 250. “[T]he 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 district court must make specific findings on all three *Austin* factors before it decides whether to revoke probation. *State v. Modtland*, 695 N.W.2d 602, 607-08 (Minn. 2005). A probation revocation cannot be “a reflexive reaction to an accumulation of technical violations,” and the district court must determine that the defendant “cannot be counted on to avoid antisocial activity.” *Austin*, 295 N.W.2d at 251 (quoting *United States v. Reed*, 573 F.2d 1020, 1024 (8th Cir. 1978)). This is a fact-specific analysis, and the district court must “create thorough, fact-specific records” to explain its reasons for revoking probation. *Modtland*, 695 N.W.2d at 608.

English does not dispute the district court’s findings on the first two *Austin* factors. However, English argues that the record does not support the third *Austin* factor because the need for confinement did not outweigh the policies favoring probation in his case. When analyzing this third *Austin* factor, the district court considers three subfactors, known as *Modtland* factors:

- (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. A court needs to find the existence of only one *Modtland* factor to support revocation. See *Goldman v. Greenwood*, 748 N.W.2d 279, 283 (Minn. 2008) (stating, in context of statutory interpretation, that appellate courts “normally interpret the conjunction ‘or’ as disjunctive, rather than conjunctive”); *Broadway Child Care Ctr., Inc. v. Minn. Dep’t of Hum. Servs.*, 955 N.W.2d 626, 634 (Minn. App. 2021) (same). We analyze only the first subfactor here.

English argues that he is not a risk to public safety because he has a history of participation in chemical-dependency treatment and he committed only low-level and technical violations of his probation. He states that he completed both inpatient and low-intensity chemical-dependency treatment in 2015 and attended additional treatment programs in 2016 and 2019. He also participated in mental-health treatment in 2019 and 2021 and worked with a community-services organization to secure housing. Furthermore, English contends that his August 2021 driving conviction and March 2021 North Dakota paraphernalia conviction were not criminal because they were either a petty-misdemeanor offense or would have been a petty misdemeanor if committed in Minnesota.

The state argues that English remains “a serious public safety concern” and that the district court properly considered English’s offense history, his recent convictions, his failure to complete an updated chemical-dependency assessment or engage more recently in treatment, and his lack of contact with his probation agent. Based on these facts, the

state argues that the record supports “the district court’s determination that the need for confinement of [English] outweighed the policies favoring probation.”

In its written order, the district court found that “the need for confinement is necessary to protect the public.” The district court said English “remained in the community without addressing his chemical use issues” after his violation in 2021, ignored the court’s order to update his chemical-dependency assessment, and did not take advantage of opportunities for rehabilitation. The court emphasized that English’s 2021 conviction was for driving without a license when “[t]he crux of *this* case is driving while impaired.” (Emphasis added.) Moreover, the district court did not credit English’s argument that he thought he was “off paper” in mid-2021 because the district court had instructed him to contact his probation agent during the April 2021 hearing and English had called his probation agent in August 2021.

We recognize that relapse can be part of the chemical-dependency recovery process and commend English’s efforts toward his rehabilitation.<sup>1</sup> Here, the district court articulated its substantive reasons for its finding on the first *Modtland* subfactor and relied on evidence from the record to support those reasons. Specifically, English did not follow

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<sup>1</sup> Notwithstanding that the record shows that English has successfully completed multiple chemical-dependency treatment programs, the district court order describes English as an untreated driver. The reality is more nuanced than that description suggests. English had maintained sobriety for five years before his first relapse and subsequent probation violation. He then completed a new chemical-dependency assessment and followed its recommendations, but unfortunately relapsed two years later on the day his friend allegedly set fire to their apartment, at a time when he was nine months from completing his seven-year probation term. After that, English sought assistance from a therapist and a community-services caseworker.

the district court's orders to complete a chemical-dependency assessment and to remain law abiding, and the district court therefore determined that his confinement is necessary to protect the public. Because the presence of only one *Modtland* subfactor is required to satisfy the third *Austin* factor, we need not analyze the second and third subfactors. We conclude that the district court did not abuse its discretion when it revoked English's probation.

**Affirmed.**