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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1498**

State of Minnesota,
Respondent,

vs.

Christine Joy Engen,
Appellant.

**Filed February 3, 2014
Affirmed
Smith, Judge**

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Todd Zettler, Scott County Attorney, Shakopee, Minnesota (for respondent)

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

Considered and decided by Smith, Presiding Judge; Johnson, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

SMITH, Judge

We affirm the district court's revocation of appellant's probation because the district court's order on remand is consistent with our previous mandate.

FACTS

In December 2008, appellant Christine Joy Engen pleaded guilty to first-degree sale of a controlled substance. The district court accepted Engen's plea and sentenced her to 110 months' imprisonment, and dispositionally departed by staying execution of the sentence for 15 years. In June 2011, Engen appeared for a probation violation hearing. Engen admitted the violation, and the district court reinstated her probation. Two months later, Engen appeared for a second probation violation hearing. The district court vacated the stay and executed her sentence. Engen petitioned for postconviction relief and, following a hearing, the district court denied the petition. Engen appealed, arguing that "the district court failed to make the required findings under the third *Austin* factor that the policies favoring probation were outweighed by the need for confinement." *Engen v. State*, No. A12-0976, 2013 WL 1859011, at *1 (Minn. App. May 6, 2013) (referencing *State v. Austin*, 295 N.W.2d 246 (Minn. 1980)). We reversed the probation revocation for failure to consider the third *Austin* factor and remanded to the district court. *Id.* at *1-2.

Two days after we released our decision, the district court informed counsel that it would not conduct "another hearing." Rather, "to comply with the dictates of" the decision, it would obtain a copy of the August 2011 violation hearing transcript and "issue an amended set of findings and resulting order." Approximately one week later, the district court made findings on the three *Austin* factors and executed Engen's sentence.

DECISION

Generally, a district court's "duty on remand is to execute the mandate of the remanding court strictly according to its terms." *Duffey v. Duffey*, 432 N.W.2d 473, 476 (Minn. App. 1988). When we remand a case to the district court without specific direction, the district court has discretion to proceed in any manner that is consistent with the remand order. *Id.* We review the district court's compliance with the mandate of the remanding court to determine whether the district court abused its discretion. *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005).

Before a stay of execution is revoked, the defendant is entitled to a hearing. *See* Minn. Stat. § 609.14, subd. 2 (2010); *State v. Cottew*, 746 N.W.2d 632, 636 (Minn. 2008) ("Due process requires that a defendant be given an opportunity to show that even if a condition of probation was violated, mitigating circumstances exist such that the violation does not warrant revocation."). Although Engen received such a hearing before the district court revoked her probation in August 2011, Engen now contends that, because we reversed the district court's revocation order, "her legal status [is] in a position that is pre-revocation," which entitles her to another hearing.

"[A] simple reversal of a judgment . . . has the least effect which is consistent with the opinion and the grounds upon which the reversal is put, and does not grant a new [hearing] unless that is the necessary effect of such reversal and the ground upon which it is put." *O'Rourke v. O'Rourke*, 134 Minn. 5, 6, 158 N.W. 704, 704 (1916) (analyzing the effect of an appellate decision reversing an order denying a new trial). With a simple reversal, "resort must be had to the opinion to see . . . what the effect of the reversal was."

Id. at 6, 158 N.W. at 704. In reversing and remanding Engen's case, we determined only that the district court erred by failing to make the required findings under the third *Austin* factor. *Engen*, 2013 WL 1859011, at *1-2. On remand, the district court corrected this error. Because we did not find error with the probation revocation hearing, the reversal does not require another hearing. Therefore, the decision whether to conduct another hearing was within the district court's discretion, and Engen is not entitled to relief.

Affirmed.