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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0880**

State of Minnesota,
Respondent,

vs.

Gregory Scott Hill,
Appellant.

**Filed December 30, 2013
Affirmed
Chutich, Judge**

Hennepin County District Court
File No. 27-CR-11-4819

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

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and
Chutich, Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

Appellant Gregory Hill asserts that the district court abused its discretion when it revoked his probation by making improper findings on the third *Austin* factor. Because the district court properly exercised its broad discretion in executing Hill's prison sentence, we affirm.

FACTS

Appellant Gregory Hill pleaded guilty to two counts of first-degree DWI and one count of driving after cancellation in August 2011. The district court sentenced Hill to a stayed sentence of 84 months in prison, followed by five years of conditional release. Hill's sentence was stayed for five years. At the time of sentencing, Hill had a criminal history score of seven, so his probationary sentence was a downward dispositional departure. As part of his probation conditions, the district court instructed Hill to abstain from using alcohol and illegal drugs.

In November 2012, Hill was arrested for obstructing legal process, and he tested positive for alcohol and cocaine. At the February 2013 probation revocation hearing, Hill waived his right to a hearing and admitted to using alcohol and cocaine. The district court revoked Hill's probation and executed his 84-month prison sentence with five years of conditional release. This appeal followed.

DECISION

Hill contends that the district court abused its discretion by making improper findings on the third *Austin* factor, relating to the need for confinement. He explains that

“[c]onfinement was not necessary to protect the public from further criminal activity” because “nothing in the record” shows that he would reoffend. Hill also asserts that the district court did not properly consider his zealous participation in treatment and that he “completed multiple treatment programs.” Hill’s argument is unavailing.

After an offender violates probation, the district court may continue probation, impose intermediate sanctions, or revoke probation and execute the stayed sentence. Minn. Stat. § 609.14, subd. 3 (2010). “The trial 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).

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 need for confinement outweighs the policies favoring probation.” *Id.* at 250; *see also State v. Modtland*, 695 N.W.2d 602, 606–08 (Minn. 2005) (reaffirming *Austin*’s holding). The district court should not offer “general, non-specific reasons for revocation” in making these findings. *Modtland*, 695 N.W.2d at 608. Rather, the district court “must seek to convey [its] substantive reasons for revocation and the evidence relied upon.” *Id.*

When assessing whether revocation is proper under the third *Austin* factor, “courts must balance the probationer’s interest in freedom and the state’s interest in insuring his rehabilitation and the public safety.” *Id.* at 607 (quotation omitted). The district court

should 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.

Austin, 295 N.W.2d at 251. The district court’s decision to revoke probation “cannot be a reflexive reaction to an accumulation of technical violations but requires a showing that the offender’s behavior demonstrates that he or she cannot be counted on to avoid antisocial activity.” *Id.* (quotation omitted).

After carefully reviewing the record, we conclude that the district court did not abuse its discretion by revoking Hill’s probation. When the district court revoked Hill’s probation, it stated to Hill,

I do find that the need for confinement outweighs the policy favoring probation. . . . [Y]ou just didn’t have any room to make a mistake for a departure. You came before me at seven points. Like you said, you have a long record. And you got a shot and unfortunately it hasn’t worked out. So I do think confinement is necessary to protect the public from further criminal activity.

The district court’s finding that “confinement is necessary to protect the public from further criminal activity” is supported by the record. Based on his criminal record, Hill has a long history that links substance abuse with criminal activity. The district court properly conveyed its “substantive reasons for revocation and the evidence relied upon,” *Modtland*, 695 N.W.2d at 608, and did not make a “reflexive” decision, as prohibited by *Austin* and *Modtland*.

In addition, Hill's probation revocation stems from two counts of first-degree DWI, a crime that has a severity level of seven. Minn. Sent. Guidelines IV (2010). "Less judicial forbearance is urged for persons violating conditions of a stayed sentence who were convicted of a more severe offense or who had a longer criminal history." Minn. Sent. Guidelines III.B (2010). Given Hill's convictions for severe offenses and his extensive criminal history, "[l]ess judicial forbearance" was appropriate here. *Id.* The district court accordingly acted within its broad discretion by revoking Hill's probation and executing his prison sentence under these circumstances.

Affirmed.