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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-52**

State of Minnesota,
Respondent,

vs.

Jeremy Suedel,
Appellant.

**Filed January 22, 2008
Affirmed
Wright, Judge**

Polk County District Court
File No. K4-03-1794

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Considered and decided by Peterson, Presiding Judge; Willis, Judge; and Wright,
Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

Appellant challenges the district court's decision reaffirming the revocation of his probation following our remand for findings as to the revocation factors set forth in *State v. Austin*, 295 N.W.2d 246 (Minn. 1980). Appellant argues that (1) the district court abused its discretion by declining to consider new evidence that he proffered at the hearing on remand; (2) the district court failed to make adequate findings as to the third *Austin* factor; and (3) even if the findings for the third *Austin* factor are adequate, the district court abused its discretion by concluding that the need for confinement outweighed policies favoring probation. We affirm.

FACTS

On November 26, 2003, appellant Jeremy Suedel got into a physical altercation with N.K. in a parking lot outside a bar in East Grand Forks. Suedel, a boxer, punched N.K. in the head, causing long-term and potentially permanent loss of speech and motor skills. As a result of the altercation, Suedel was charged with one count of first-degree assault, Minn. Stat. § 609.221, subd. 1 (2002), and one count of third-degree assault, Minn. Stat. § 609.223, subd. 1 (2002).¹

On May 26, 2004, Suedel pleaded guilty to first-degree assault. In exchange for Suedel's guilty plea, the state agreed to dismiss the third-degree-assault charge and

¹ Suedel was on probation at the time of the offense. As a condition of his probation, he was prohibited from going to bars except for scheduled boxing matches and required to notify his probation officer before doing so. Because he committed multiple probation violations on November 26, 2003, Suedel's probation was revoked, and he was in custody when he pleaded guilty and was sentenced in the instant case.

moved the district court for a dispositional departure from the presumptive guidelines sentence of 110 months' imprisonment. The district court granted the dispositional departure and sentenced Suedel to 115 months' imprisonment, the maximum presumptive duration, stayed the execution of the sentence, and placed Suedel on probation for up to 25 years. The probation conditions imposed required Suedel to refrain from using or possessing alcohol or any nonprescribed controlled substances, submit to random drug testing and searches, remain law-abiding, undergo chemical-dependency and psychological assessments, and abide by the resulting recommendations. Suedel acknowledged his understanding that violating the conditions of his probation could result in his imprisonment.

In fall 2004, Suedel tested positive for marijuana use, failed to complete outpatient counseling, left the halfway house without prior approval, and failed to remain in contact with his probation officer. In addition, while out of contact with his probation officer, Suedel pleaded guilty in North Dakota to criminal mischief.

At a subsequent hearing, Suedel admitted the following four probation violations: (1) failing to abstain from the use of mood-altering chemicals, (2) failing to abide by the recommendations of the court-ordered chemical-dependency assessment, (3) failing to remain in contact with his probation officer, and (4) failing to remain law-abiding. The district court revoked Suedel's probation and executed Suedel's sentence on May 9, 2005.

On appeal, applying *State v. Modtland*, 695 N.W.2d 602 (Minn. 2005), we reversed and remanded for findings on the three *Austin* factors. *State v. Suedel*, No. A05-1561, 2006 WL 1891121, *2 & n.1 (Minn. App. July 11, 2006).

At the post-remand hearing on October 16, 2006, Suedel urged the district court to place him on probation once again based on positive developments that had occurred since the original revocation hearing. Finding that evidence regarding the new developments was irrelevant, the district court based its decision on the record before it at the May 9, 2005 hearing. The district found that each of the *Austin* factors had been met and reaffirmed its prior decision to revoke Suedel's probation. This appeal followed.

DECISION

I.

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 a case returns to the district court on remand without specific directions as to how the district court should proceed, 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 it abused its discretion. *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005). If the district court holds an evidentiary hearing on remand, its evidentiary rulings will not be disturbed absent a clear abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

In remanding Suedel's case, we instructed the district court to make findings on each of the three *Austin* factors, but our ruling was silent as to whether the record was to be reopened on remand. *State v. Suedel*, No. A05-1561, 2006 WL 1891121, at *2 (Minn. App. July 11, 2006). Thus, the decision whether to reopen the record and consider additional relevant evidence on remand was within the district court's discretion. *See Duffey*, 432 N.W.2d at 476 (discussing district court's broad discretion when not given specific instructions on remand).

At the post-remand hearing, the district court permitted Suedel to present new evidence. Suedel argued that changes in his life since the district court revoked his probation demonstrated that he was more amenable to probation than he had been in May 2005. Suedel advised that he had additional support from family and friends and indicated that he wanted to be a part of his child's life. Suedel argued that, because he had reached "a different level of understanding" during his incarceration, he was ready to comply with the conditions of probation. Suedel also advised that he had been recommended for psychological and chemical-dependency treatment at a North Dakota facility but that chemical-dependency treatment would not be available in prison until the last six months of his sentence.

Although the district court ultimately received the evidence, it was initially uncertain whether consideration of such evidence was permitted. The district court later concluded that the proffered evidence was irrelevant to its *Austin* analysis and, therefore, declined to rely on it. The district court reasoned that Suedel's behavior in the restrictive environment of prison would not call into question its findings from May 9, 2005. On

that basis, the district court limited its analysis to the evidence available at the May 9, 2005 hearing and found that, at that time, Suedel was not amenable to probation.

Had the district court failed to exercise its considerable discretion in deciding what evidence to consider in addressing the *Austin* factors, it would have been in error. See *State v. Carlson*, 360 N.W.2d 442, 443 (Minn. App. 1985) (finding error in district court's failure to exercise discretion in evidentiary matter); see also *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005) (requiring district court to indicate evidence relied on for *Austin* analysis). But the district court properly evaluated the relevance of the evidence and reasonably found that, because Suedel's change of heart in prison was unlikely to have "any bearing whatsoever" on his amenability to probation, the evidence was irrelevant. Because the district court did not abuse its discretion by ruling that the evidence submitted by Suedel was not probative of his amenability to probation, Suedel's challenge on this ground fails.

II.

We next consider Suedel's claim that the district court failed to make adequate findings as to the third *Austin* factor. Whether the district court has made adequate findings before revoking probation presents a question of law, which we review de novo. *Modtland*, 695 N.W.2d at 605.

Before deciding to revoke a defendant's probation, the district court must satisfy the following three requirements: (1) designate the specific condition or conditions that the defendant violated, (2) find that the violation was intentional or inexcusable, and (3) find that the need for confinement outweighs the policies favoring probation. *State v.*

Austin, 295 N.W.2d 246, 250 (Minn. 1980). The mere recital of the second and third *Austin* factors with general, nonspecific reasons for revocation is inadequate to satisfy the requirements of *Austin*. *Modtland*, 695 N.W.2d at 608. In addition to procedural conformity, we also review the district court’s findings to determine whether they include an explanation of the substantive reasons for revocation and the evidence relied on in reaching its probation-revocation decision. *Id.* (emphasizing that district court “must seek to convey” substantive reasons in making *Austin* findings).

At the remand hearing, the district court addressed the procedural requirements of *Austin* and *Modtland* and determined that all three *Austin* factors were satisfied. The district court weighed public-safety concerns against Suedel’s potential for rehabilitation and chemical-dependency treatment and found that Suedel was not amenable to probation. The district court also indicated that Suedel “had a number of chances [and] didn’t take advantage of them.” In doing so, the district court explicitly relied on many of the substantive reasons for revoking Suedel’s probation that it had set forth at the May 9, 2005 hearing.

At the earlier revocation hearing, the district court made several substantive findings pertinent to the third *Austin* factor. The district court emphasized that Suedel’s probation was a downward dispositional departure, and it found that Suedel had been aware that failure to comply with the probation conditions would subject him to 115 months’ imprisonment. The district court also considered Suedel’s extensive criminal history and multiple probation violations, finding that Suedel’s “track record” did not support the district court granting Suedel any leniency. The district court properly

considered the nature of Suedel's North Dakota criminal-mischief conviction while on probation along with the underlying conduct. And the district court found that Suedel continued to ignore his "chemical issues." Based on the evidence presented, the district court concluded that "confinement [was] necessary to protect the public from further criminal activity" and that treatment would be more effectively provided in prison.

Thus, although the district court's consideration of the *Austin* factors at the May 9, 2005 hearing was procedurally inadequate, *Suedel*, 2006 WL 1891121, at *2, the record from that hearing nonetheless contains numerous findings indicating the district court's "substantive reasons for revocation and the evidence relied upon," *Modtland*, 695 N.W.2d at 608. Taken together, the substantive findings from the earlier probation-revocation hearing and the conclusion on remand that Suedel was not amenable to probation satisfy the requisite probation-revocation determination that the need for confinement outweighs policies favoring probation. Because the district court's findings collectively address both the procedural and substantive requirements of *Austin*, they are more than adequate to satisfy the requirements articulated in *Austin* and *Modtland*.

III.

We next consider Suedel's argument that the district court abused its discretion by finding that the need for confinement outweighs the policies favoring probation. The district court has broad discretion in determining whether there is sufficient evidence to revoke probation. *Modtland*, 695 N.W.2d at 605. Absent a clear abuse of discretion, the district court's decision to revoke probation will not be disturbed on appeal. *Id.*

In weighing the third *Austin* factor, a district court must “bear in mind that policy considerations may require that probation not be revoked even though the facts may allow it.” *Id.* at 606 (quotation omitted). In short, revocation should occur when treatment has failed and the offender cannot be counted on to avoid antisocial activity. *Id.*; *Austin*, 295 N.W.2d at 251.

The *Austin* court endorsed the American Bar Association Standards for Criminal Justice regarding probation as a framework for analyzing the third factor. *Austin*, 295 N.W.2d at 251 (citing Standards for Crim. Justice: Probation § 5.1(a) (Approved Tentative Draft 1970)). These standards disapprove of imprisonment following revocation unless it is necessary to protect the public from further criminal activity by the offender, the offender is in need of correctional treatment that can be provided most effectively if the offender is confined, or it would unduly depreciate the seriousness of the violation if probation were not revoked. *Id.*

In reaffirming its revocation of Suedel’s probation, the district court found that two of the relevant standards were met. First, Suedel’s history of violent and other criminal behavior established that confinement was necessary to promote public safety. The district court considered the extreme violence of the offense conduct, which caused the victim to suffer long-term physical and mental impairment, and also Suedel’s propensity for violence, as demonstrated by his commission of another violent offense while he was on probation for first-degree assault. The district court also found Suedel’s failure to comply with treatment programming and his use of illegal drugs in violation of

his probation conditions to be persuasive evidence that Suedel could best receive treatment in prison. Each of the findings is supported by ample record evidence.

The district court's substantive findings regarding public safety and chemical-dependency treatment demonstrate that Suedel cannot be counted on to avoid antisocial, violent behavior. *Modtland*, 695 N.W.2d at 606; *Austin*, 295 N.W.2d at 251. Thus, the district court's decision on remand to reaffirm its revocation of Suedel's probation and execute the presumptive guidelines sentence of 115 months' imprisonment was a sound exercise of its discretion.

Affirmed.