STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0086

State of Minnesota,
Respondent,
vs.

Charles Edwin Clark,
Appellant.

Filed January 8, 2008
Reversed and remanded
Halbrooks, Judge

Dodge County District Court
File No. K6-04-205

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Paul Kiltinen, Dodge County Attorney, Courthouse, 22 6th Street East, Mantorville, MN 55955 (for respondent)

John M. Stuart, State Public Defender, Cathryn Middlebrook, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and Minge, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant challenges the district court's revocation of his probation on the ground that the district court failed to make sufficient findings to support the revocation. Because we conclude that the district court failed to make findings in support of its revocation of appellant's probation, we reverse and remand.

FACTS

In 2004, appellant Charles Edwin Clark pleaded guilty to a count of aiding and abetting controlled-substance crime in the third degree. Appellant was sentenced to a stay of imposition and placed on probation for up to seven years. As a condition of appellant's probation, he was required to remain alcohol and drug free and to submit to testing at the request of his probation officer.

Appellant tested positive for marijuana and barbiturates in 2006. At the probation-revocation hearing that followed, the district court revoked appellant's stay of imposition, sentenced him to 21 months in prison with a stay of execution, and ordered him to serve 60 days in jail.

After appellant served his time in jail, he had a second probation-violation hearing. This hearing in October 2006 was the result of another drug test that showed the presence of amphetamine, methamphetamine, and marijuana in appellant's system. At the probation-violation hearing, appellant denied the positive results of the test and claimed that prescribed medication had caused false-positive results. Probation officer John Asleson testified that he was the person who actually administered appellant's drug test

and that he had performed a "quick test" on the urine sample. Asleson testified that the quick test was positive for controlled substances and that he informed appellant's probation officer of that result.

Appellant argued that the chain of custody for his urine test was not established and that his probation officer suggested that the urine sample was not valid. Appellant testified that no one witnessed his act of urinating and that he left the sample on the counter. But appellant's probation officer contradicted appellant's statements and testified that proper protocol was observed in the taking of appellant's urine sample and that the test was reliable.

Appellant's probation officer also testified that she spoke with the toxicology lab that performed the full test to verify the quick-test results. The toxicology lab told appellant's probation officer that none of appellant's medications could have caused a false-positive test result. At the conclusion of the testimony, the district court found appellant in violation of his probation. The district court orally revoked appellant's probation and executed the 21-month sentence but made no other findings. This appeal follows.

D E C I S I O N

Appellant argues that the district court failed to make the oral or written findings that are required to support the revocation of his probation. Whether the district court has made adequate findings before revoking probation is a question of law, which we review de novo. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

Before revoking a defendant's probation, the district court must engage in a three-step analysis. *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). "[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 [the] need for confinement outweighs the policies favoring probation." *Id.* The district court must make these findings on the record and "should not assume that [it] ha[s] satisfied *Austin* by reciting the three factors and offering general, non-specific reasons for revocation." *Modtland*, 695 N.W.2d at 606, 608.

To ensure that the district court "create[s] [a] thorough, fact-specific record[] setting forth [its] reasons for revoking probation," it should explain its substantive reasons for revocation and the evidence relied upon in reaching that determination. *Id.* at 608. Minnesota appellate courts will not uphold the district court's revocation of probation in the absence of the requisite findings, even if revocation is supported by sufficient evidence. *Id.* at 606.

The district court did not make findings as required by *Austin* and *Modtland*. The district court provided none of the "substantive reasons for revocation and the evidence [it] relied upon." *Modtland*, 695 N.W.2d 608. Appellant argues that this court should weigh the third factor and conclude that the interests of rehabilitation outweigh the need for confinement. But without any findings on the record, we are not in a position to make such a determination. *In re Welfare of M.D.O.*, 462 N.W.2d 370, 374-75 (Minn. 1990) (stating that the role of the court of appeals is to correct errors, not find facts). It is not within the province of appellate courts to determine fact issues on appeal. *Kucera v.*

Kucera, 275 Minn. 252, 254, 146 N.W.2d 181, 183 (1966). Because the required findings of fact necessary to conduct a meaningful review of appellant's probation revocation are absent, we reverse and remand to the district court.

Reversed and remanded.