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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0978**

State of Minnesota,
Respondent,

vs.

Ronald James Meyer,
Appellant.

**Filed December 26, 2017
Affirmed
Hooten, Judge**

Ramsey County District Court
File No. 62-CR-16-4266

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Larkin, Judge; and Smith, T.,
Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant challenges the district court's revocation of his probation and execution of his sentences, arguing that the district court abused its discretion by failing to sufficiently

find the third *Austin* factor, which requires the need for confinement to outweigh the policies favoring probation. *See State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). We affirm.

FACTS

A jury convicted appellant Ronald James Meyer of two counts of felony domestic assault, in violation of Minn. Stat. § 609.2242, subd. 4 (2014), and one count of domestic assault by strangulation, in violation of Minn. Stat. § 609.2247, subd. 2 (2014). In November 2016, the district court imposed a 36-month sentence for felony domestic assault (harm) and a concurrent sentence of 21 months for felony domestic assault (fear). The district court stayed execution of Meyer's sentences and placed him on probation for five years. As conditions of probation, the district court required Meyer to (1) inform his probation officer of any change in address; (2) complete a chemical dependency evaluation and follow the recommendations of the evaluation; and (3) abstain from alcohol. The district court also conditioned his probation on complying with a domestic abuse no contact order (DANCO), which prohibited him from having contact with the victim or going back to his former residence where the offenses were committed.

On March 9, 2017, Meyer's probation officer filed a report alleging that Meyer had failed to follow the recommendations of his chemical assessment, failed to abstain from alcohol, and failed to keep probation informed of his current address. Police arrested Meyer at his former residence nine days later. His probation officer then filed an amended report, adding that Meyer failed to abide by the DANCO banning him from his former residence.

At a probation violation hearing, Meyer admitted to the four violations of his probation's conditions. The state recommended that Meyer's sentences be executed. Meyer asked the district court to not execute his sentences and stated that he would like to remain on probation. The district court decided to revoke Meyer's probation and execute his sentences, finding that Meyer intentionally and inexcusably violated his probation conditions and that the need for confinement outweighed the policies favoring probation. This appeal followed.

D E C I S I O N

Meyer contends that the district court abused its discretion by deciding to revoke his probation and execute his sentences. The district court has broad discretion in determining whether there is sufficient evidence to revoke probation and will not be reversed absent an abuse of that discretion. *Austin*, 295 N.W.2d at 249–50. In order to revoke probation, the district court must make findings regarding the three *Austin* factors: (1) the probationer violated a condition of probation; (2) the violation was intentional or inexcusable; and (3) the need for confinement outweighs the policies favoring probation. *Id.* at 250. Whether the district court made the requisite findings of the *Austin* factors is a question of law that we review de novo. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005). Meyer only disputes that the district court failed to make sufficient findings regarding the third *Austin* factor.

“When determining if revocation is appropriate, courts must balance the probationer's interest in freedom and the state's interest in insuring his rehabilitation and the public safety, and base their decisions on sound judgment and not just their will.” *Id.*

at 606–07 (quotation omitted). In addressing the third *Austin* factor, 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.

Id. at 607 (quotation omitted).

The district court stated at the probation violation hearing,

The Court finds that the need for confinement outweighs the policies favoring probation because of [Meyer’s] prior criminal history and use of weapons and all of the potential interventions that have been provided for [Meyer] that [he has] disregarded and [his] continued chemical use. That it would unduly depreciate the seriousness of the probation if probation was not revoked.

Meyer claims that the district court’s statements were “conclusory” and “reflexive” and that the district court failed to take into account his difficult circumstances. *See Austin*, 295 N.W.2d at 251 (explaining that 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” (quotation omitted)). He asserts that the district court did not consider that he maintained some contact with probation, he struggled with the treatment program recommended by probation, and he was homeless. These arguments are unpersuasive.

The district court's finding that Meyer disregarded the "potential interventions" and continued his chemical use adequately reflects the concerns raised in the probation violation reports. According to these reports, Meyer left his inpatient treatment program "because he didn't want to participate." He also tested positive for alcohol use. The state alleged at the hearing that Meyer has 13 assault-related convictions, many of which were alcohol-related. Because of Meyer's continued alcohol use, his unwillingness to participate in treatment, and his extensive criminal history involving alcohol, it was within the district court's discretion to determine that failure to revoke his probation would unduly depreciate the seriousness of his violations. These findings are sufficient for the district court to reasonably conclude that public safety and the need for confinement outweighed the policies favoring probation.

We conclude that the district court did not abuse its discretion by revoking Meyer's probation and executing his sentences.

Affirmed.