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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0676**

State of Minnesota,
Respondent,

vs.

Sam Joseph Goggleye,
Appellant.

**Filed January 7, 2019
Affirmed
Stauber, Judge***

Beltrami County District Court
File No. 04-CR-15-2574

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

David L. Hanson, Beltrami County Attorney, David P. Frank, Assistant County Attorney,
Bemidji, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Hooten, Judge; and
Stauber, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from the district court's revocation of his probation, appellant argues that the district court erred in (1) determining that appellant's violations were intentional or inexcusable; (2) determining that the need for confinement outweighed the policies favoring continued probation; and (3) failing to make sufficient findings on the *Austin* factors. We affirm.

FACTS

Appellant Sam Joseph Goggleye pleaded guilty to one count each of kidnapping (released in a safe place – no great bodily harm), fleeing a peace officer in a motor vehicle, and fleeing a peace officer by means other than a motor vehicle. He was sentenced to a stayed term of 27 months in prison and placed on supervised probation. Appellant violated probation five times between December 30, 2015, and December 12, 2017.

The first probation violation report was filed in December 2015. After being apprehended on an arrest warrant in May 2016, appellant admitted violating probation by failing to remain law abiding because he had been charged with littering, failing to inform his probation agent of contact with law enforcement within 72 hours, failing to inform his probation agent of the new charge within 72 hours, and failing to maintain contact with probation because he missed a scheduled meeting with his agent and did not contact his agent afterward.

The second probation violation report was filed in July 2016 after appellant failed to appear for a scheduled review hearing. After being apprehended on an arrest warrant

almost one year later, appellant admitted violating probation by failing to maintain contact with probation after being released from custody in May 2016, missing scheduled appointments in June 2016, failing to remain law abiding due to a new fleeing-on-foot charge, and failing to attend Domestic Abuse Batterers Intervention Program (BIP).

The third probation violation report was filed in August 2017. Appellant admitted violating probation by failing to report to probation immediately after being released from custody, failing to attend BIP, violating a domestic-abuse no-contact order (DANCO), and failing to remain law abiding because he was identified as having been involved in an assault and the victim's property was found in his possession.

The fourth probation violation report was filed in November 2017, alleging that appellant violated probation by using alcohol. Appellant was brought to a hospital due to his high level of intoxication. The report noted that appellant had not contacted his probation agent or participated in any programming since being released from custody two weeks earlier. Appellant admitted violating probation.

The fifth probation violation report was filed in December 2017, alleging that appellant failed to appear for a domestic violence court hearing, failed to complete a chemical dependency assessment, failed to re-enroll in and complete BIP, and failed to report to his agent. An addendum to the violation report was filed, alleging that appellant failed to remain law abiding due to an arrest for a misdemeanor DANCO violation and fifth-degree possession of methamphetamine. Appellant pleaded guilty to the DANCO violation. Appellant admitted that he failed to remain law abiding due to the DANCO violation and denied the remaining probation violations.

The district court revoked probation and executed appellant's sentence. This appeal followed.

DECISION

A district court has broad discretion in determining whether there is sufficient evidence to revoke probation. *State v. Austin*, 295 N.W.2d 246, 249 (Minn. 1980). This court will only reverse a district court's probation revocation determination "if there is a clear abuse of that discretion." *Id.* at 250.

Before a district court may revoke probation, it must make specific findings on the *Austin* factors to create a "thorough, fact-specific record[]setting forth th[e] reasons for revoking probation." *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005). First, the district court must "designate the specific probation condition or conditions" that the defendant violated. *Austin*, 295 N.W.2d at 250. Second, the district court must "find that the violation was intentional or inexcusable." *Id.* Third, the district court must determine that the "need for confinement outweighs the policies favoring probation." *Id.* Whether the district court made the required findings under *Austin* is a question of law that we review de novo. *Modtland*, 695 N.W.2d at 605. 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 . . . cannot be counted on to avoid antisocial activity." *Austin*, 295 N.W.2d at 251 (quotations omitted).

Intentional and inexcusable

A probation violation is mitigated when it is unintentional or excusable. *State v. Cottew*, 746 N.W.2d 632, 636 (Minn. 2008). During the two-year time period between

December 2015 and December 2017, five probation violation reports were filed. For over one year during that time, appellant had no contact with probation. Following an arrest warrant that was issued in July 2016 after the second probation violation report was filed, appellant had no contact with probation until he was apprehended the following July of 2017. During the fall of 2017, appellant continued to miss meetings with his probation agent and failed to maintain contact. Appellant also missed a domestic-violence-court hearing and failed to consistently attend BIP. This evidence supports the district court's findings that appellant's violations were intentional and inexcusable.

Need for confinement

The supreme court has stated:

In making the third *Austin* finding, we emphasize that district courts must bear in mind that policy considerations may require that probation not be revoked even though the facts may allow it and that the purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed. . . .

Modtland, 695 N.W.2d at 606 (quotations omitted).

In determining whether the need for confinement outweighs the policies favoring probation, the district court should consider the following factors:

- (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 found that confinement is necessary to protect the public from further criminal activity. The court stated, “The victim of the kidnapping was once again required to call law enforcement to protect herself from [appellant], and as a result, [appellant] was convicted of [v]iolation of a [DANCO].”

The district court found that appellant is in need of correctional treatment that is not able to be provided in the community. This finding is supported by appellant’s failure to consistently participate in BIP. Appellant argues that his chemical dependency assessment, which he obtained after the fifth probation violation report was filed, recommended intensive inpatient treatment in the community. But the district court found that the state failed to prove by clear and convincing evidence that appellant violated probation by failing to complete a chemical dependency assessment because appellant did not have enough time to complete the assessment between his release from jail in November 2017 and his arrest on the probation violation in December 2017. Thus, his chemical dependency violation did not affect his probation revocation and the remaining factors establish support for revocation.

Although the district court did not address the depreciation factor, five probation violation reports were filed in less than two years, appellant was absent on outstanding arrest warrants during over one year of that time, and he was charged with additional criminal offenses, including a violation of a DANCO prohibiting contact with the kidnapping victim.

The evidence supports the district court’s finding that the need for confinement outweighs the policies favoring probation.

Appellant next argues that the district court's findings on the *Austin* factors were insufficient.

The requirement that courts make findings under the *Austin* factors assures that district court judges will create thorough, fact-specific records setting forth their reasons for revoking probation. We emphasize that, in making the three *Austin* findings, courts are not charged with merely conforming to procedural requirements; rather, courts must seek to convey their substantive reasons for revocation and the evidence relied upon.

Modtland, 695 N.W.2d at 608.

The district court made detailed findings on appellant's numerous probation violations, including his failure to maintain contact with probation, his failure to complete BIP, his absences following the issuance of arrest warrants, and the additional criminal charges filed against him. The findings are sufficient to support the revocation of probation.

Affirmed.