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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1077**

State of Minnesota,
Respondent,

vs.

Dale Edward Lehman, Jr.,
Appellant.

**Filed March 9, 2020
Affirmed
Kirk, Judge***

Stearns County District Court
File No. 73-CR-15-7906

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Janelle P. Kendall, Stearns County Attorney, Kyle R. Triggs, Assistant County Attorney,
St. Cloud, Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Reilly, Judge; and Kirk,
Judge.

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

UNPUBLISHED OPINION

KIRK, Judge

In this probation revocation appeal, appellant argues that the district court abused its discretion when it revoked his probation because the record does not support a finding that the need for his confinement outweighs the policies favoring his continued probation. We affirm.

FACTS

In 2015, appellant Dale Edward Lehman, Jr., was arrested for driving while impaired (DWI) and possession of methamphetamine. Lehman pleaded guilty to felony fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(b)(1) (2014), and misdemeanor DWI in violation of Minn. Stat. § 169A.27, subd. 1(2) (2014). He was sentenced to 15 months in prison for the possession charge, stayed for ten years, and 90 days in prison for the DWI charge, stayed for two years. The district court placed Lehman on probation for ten years. Conditions of Lehman's probation included abstaining from all controlled substance use and completing a chemical dependency evaluation.

From September 2017 to April 2019, the district court determined that Lehman violated his probation three times after he missed multiple drug screenings, failed multiple drug screenings, attempted to alter a urine sample, and failed to complete an updated chemical dependency evaluation. Based on Lehman's three formal violations, the district court determined that "it would unduly depreciate the seriousness of the violation if probation were not revoked," and thus, "the need for confinement outweighs the policy

favoring probation.” The district court revoked Lehman’s probation and executed his 15-month sentence.

This appeal follows.

DECISION

Lehman argues that the district court abused its broad discretion when it revoked the stay of execution because the district court’s finding that the need for his confinement outweighs the policies favoring probation is not supported by the record. The district court has broad discretion in determining whether sufficient evidence exists to revoke probation, and this court will reverse only if there is a clear abuse of discretion. *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980).

Before a district court revokes an individual’s probation, it must make three specific findings: (1) that the probationer violated a specific condition of his or her probation; (2) that the violation was intentional or inexcusable; and (3) that the need for confinement outweighs the policies favoring probation. *Id.* at 251. In making these findings, “courts must seek to convey their substantive reasons for revocation and the evidence relied upon.” *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005). Fundamentally, a 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.” *Austin*, 295 N.W.2d at 251 (quotations omitted). Whether the district court made the required *Austin* findings is a question of law that we review de novo. *Modtland*, 695 N.W.2d at 605.

Lehman challenges only the district court's finding on the third *Austin* factor: that the need for his confinement outweighs the policies favoring probation. When assessing this third factor, a district court should balance whether: (1) "confinement is necessary to protect the public from further criminal activity by the offender"; (2) "the offender is in need of correctional treatment which can most effectively be provided if he is confined"; or (3) "it would unduly depreciate the seriousness of the violation if probation were not revoked." *Id.* at 607. A district court is not required to find that all three considerations weigh in favor of a finding that the need for confinement outweighs the policy favoring probation. See *Goldman v. Greenwood*, 748 N.W.2d 279, 283 (Minn. 2008) (stating that "we normally interpret the conjunction 'or' as disjunctive rather than conjunctive").

Here, the district court considered each *Austin* factor as it related to Lehman. When it assessed the third factor, it first determined whether confinement was necessary to protect the public from further criminal activity by the offender. The district court concluded that it was unclear if there was any other ongoing criminal activity apart from Lehman's continued illicit drug use and if he would continue to drive under the influence. The district court next considered whether the offender was in need of correctional treatment that can most effectively be provided if he is confined. The district court acknowledged that Lehman was in need of treatment and that it would be unlikely that he would receive any substance-abuse programming while confined because of the relatively short duration of his sentence. Finally, the district court considered whether it would unduly depreciate the seriousness of the violation if Lehman's probation was not revoked. The district court determined that because this was his third formal violation, he had previously failed to

complete his ordered chemical dependency evaluation, and he had failed to demonstrate any meaningful progress in his treatment goals, “it would unduly depreciate the seriousness of the violation if probation were not revoked.”

The record reflects that the district court did not take this course of action lightly. Indeed, it acknowledged, “the court is put in an impossible situation,” and it “really struggle[d] on what to do.” Nevertheless, after carefully assessing Lehman’s history of probation violations and the totality of the circumstances of the case, and balancing his history and these circumstances in light of all of the *Austin* factors, the district court determined that, “the need for confinement outweighs the policy favoring probation” as “it would unduly depreciate the seriousness of the violation” to allow Lehman to remain on probation.

As the record is sufficient to support that the district court’s revocation of Lehman’s probation was more than “a reflexive reaction to an accumulation of technical violations,” and instead was based on the district court’s determination that “the offender’s behavior demonstrates that he or she cannot be counted on to avoid antisocial activity,” *Austin*, 295 N.W.2d at 251 (quotations omitted), we conclude that the district court did not abuse its discretion when it revoked Lehman’s stay of execution and executed his 15-month sentence.

Affirmed.