

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0490**

State of Minnesota,
Respondent,

vs.

D.D.,
Appellant.

**Filed March 15, 2021
Affirmed
Slieter, Judge**

Hennepin County District Court
File Nos. 27-JV-15-1803, 27-CR-19-32165

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

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Gaïtas, Judge; and Rodenberg, Judge.*

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

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant challenges the district court's revocation of his extended jurisdiction juvenile (EJJ) status and its subsequent execution of the imposed adult sentence. Appellant claims that the district court erred in concluding that the need for confinement outweighed the policies favoring continued probation. Because the district court did not abuse its discretion in revoking appellant's EJJ status and executing the adult prison sentence, we affirm.

FACTS

In 2015, appellant was charged in a juvenile-delinquency petition with attempted second-degree murder, in violation of Minn. Stat. § 609.19, subd. 1(1) (2014), with reference to Minn. Stat. §§ 609.11, 609.17 (2014), and first-degree assault, in violation of Minn. Stat. § 609.221, subd. 1 (2014). According to the petition, appellant was age 14 and shot a 17 year old with a firearm several times in the victim's back and stomach at a metro-transit station in New Brighton, resulting in serious injuries to the victim's liver and kidney and the victim being placed in a medically induced coma.

The Hennepin County district court denied a motion from the state to certify the proceeding for adult prosecution and designated the case as an EJJ and appellant pleaded guilty to attempted second-degree murder. Pursuant to his EJJ status, the district court sentenced appellant to a stayed adult prison sentence of 153 months and placed appellant on EJJ probation until his 21st birthday. His probation conditions included remaining law-abiding, not possessing firearms, and completing programming at the Mesabi Academy.

Appellant did not complete programming at Mesabi Academy and was discharged. Upon discharge, a probation-violation proceeding was commenced. Appellant admitted this probation violation, and the district court ordered appellant placed at the Minnesota Correctional Facility—Red Wing (Red Wing). Appellant successfully completed programming at Red Wing and was then placed in a transition program at the Maple Tree group home in Maplewood. Following a subsequent probation violation, the district court again placed appellant at Red Wing.

After appellant completed a relapse program at Red Wing, the district court directed that appellant reside with his mother and mother's friend in Stearns County. Following allegations that appellant "pulled a gun" at the home and hit a person in the head with the firearm, Stearns County charged appellant by delinquency petition with two counts of second-degree assault with a dangerous weapon and one count of illegal possession of a firearm. Appellant waived his right to a certification hearing, agreed to be charged as an adult, and pleaded guilty to all three counts.

As a result of pleading guilty to these charges in Stearns County, appellant's probation agent filed a probation-violation report in Hennepin County which recommended revocation of EJJ status and execution of appellant's adult sentence in the Hennepin County juvenile file.

A contested EJJ revocation hearing occurred and the district court heard testimony from appellant, his probation officer, a former Mesabi Academy employee, and various juvenile probation and release-program staff. The district court received exhibits detailing appellant's past probation violations and placement discharges, his progress and treatment

plans, the complaint, plea petition, and sentencing order from appellant's adult charges and convictions in Stearns County.

Following the revocation hearing, the district court revoked appellant's EJJ status on the juvenile file and executed the 153 month adult prison sentence. This appeal follows.

DECISION

A district court "has broad discretion in determining if there is sufficient evidence to revoke probation." *State v. Austin*, 295 N.W.2d 246, 249 (Minn. 1980). Absent a clear abuse of discretion, our court will affirm a probation-revocation and a disposition in a juvenile-delinquency case. *In re Welfare of R.V.*, 702 N.W.2d 294, 298 (Minn. App. 2005). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017).

Appellant argues that the district court's findings regarding the third *Austin* factor—that the need for confinement outweighs the policies favoring probation—were insufficient to support its conclusion to revoke probation. *Austin*, 295 N.W.2d at 250. The state contends that the district court's findings on this factor were supported by the record and justify revocation. Because we agree the district court's *Austin* and *Modtland* findings were sufficient and supported by the record, the district court did not abuse its discretion in revoking appellant's probation.

The district court must address three factors in determining whether revocation is appropriate. *Austin*, 295 N.W.2d at 250. "[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.* This analysis applies to both adult and EJJ status. *See State v. B.Y.*, 659 N.W.2d 763, 768-69 (Minn. 2003). Appellant contests only the third factor.

To satisfy the third *Austin* factor, the state must establish one of the following subfactors: (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.” *State v. Modtland*, 695 N.W.2d 602, 607 (Minn. 2005). It is not necessary for the district court to find that each factor is satisfied, but it is required to “create thorough, fact-specific records setting forth [its] reasons for revoking probation” and provide “substantive reasons for revocation and the evidence relied upon.” *Id.* at 607-08.

The district court detailed the conduct underlying appellant’s adult convictions and concluded that the third *Modtland* subfactor—that it would “unduly depreciate the seriousness of the violation if probation is not revoked”—was satisfied. *Id.* at 607. The district court reasoned that appellant’s conduct “demonstrate[s] an inability to comply with his EJJ probation” and that the new law violations, three felonies involving firearms, were not “technical.” The district court noted this demonstrates that appellant “cannot be counted on to avoid anti-social activity.” *See Austin*, 295 N.W.2d at 251 (stating that revocation decision requires more than an accumulation of technical violations and instead “requires a showing that the offender’s behavior demonstrates that he or she cannot be counted on to avoid anti-social activity”) (quotations omitted).

The district court also considered potential mitigating factors but stated that it “[could not] conclude” that “system failures” explain appellant’s “decision to intentionally assault [the victims] with a handgun.” The district court noted that appellant spent “almost two years” at Red Wing after leaving Mesabi Academy, where he received “individual counseling, primary group services, cognitive skill development, academic/vocational services, mental health services, and chemical health individual services.” Because the district court’s determinations were based on the facts of the record and do not reflect a legal error, we discern no abuse of discretion.

Affirmed.