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Minn. R. Civ. App. P.136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0782**

State of Minnesota,
Respondent,

vs.

Efrem Andre Jackson,
Appellant.

**Filed January 4, 2021
Affirmed
Larkin, Judge**

Stearns County District Court
File No. 73-CR-18-6373

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

Janelle P. Kendall, Stearns County Attorney, River D. Thelen, Assistant County Attorney,
St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Bjorkman,
Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges the district court's revocation of his probation, arguing that the court failed to find that his probation violations were intentional or inexcusable and that the record does not support the court's finding that the need for confinement outweighed the policies favoring probation. We affirm.

FACTS

The state charged appellant Efrem Andre Jackson with two counts of domestic assault and one count of making terroristic threats. The state sought an aggravated sentence based on Jackson's status as a "career offender." See Minn. Stat. § 609.1095, subd. 4 (2016) (permitting increased sentences for certain repeat offenders). Jackson pleaded guilty to one count of domestic assault and admitted that he was a career offender. The remaining charges were dismissed.

In September 2019, the district court sentenced Jackson to 40 months in prison, an upward durational departure, but stayed execution of the sentence, a downward dispositional departure. The district court placed Jackson on probation for five years under certain conditions, including that he refrain from the use of controlled substances, submit to random testing, and comply with the rules of probation.

In November 2019, Jackson violated the terms of his probation by using methamphetamine and cocaine. The district court imposed an intermediate sanction of 15 days in jail, with a portion of that sanction conditionally stayed.

In December 2019, Jackson violated the terms of his probation a second time by using methamphetamine and cocaine and by failing to attend a scheduled meeting with his probation agent. The district court imposed an intermediate sanction of 60 days in jail, with a portion of that sanction conditionally stayed.

In February 2020, Jackson violated the terms of his probation a third time by using methamphetamine and cocaine and by failing to contact his probation agent as required. The district court held a probation-revocation hearing. Jackson admitted that he had violated the terms of his probation as alleged. He also admitted that the violations were “either intentional or were inexcusable.” The district court accepted Jackson’s admissions.

Jackson’s probation agent recommended that Jackson be afforded “one additional opportunity to address his chemical dependency within the community,” but the agent noted “significant concern” over Jackson’s relapses, including concern for public safety based on Jackson’s history of violent behavior when he uses controlled substances. The state recommended that Jackson’s probation be revoked based on his multiple probation violations.

The district court revoked Jackson’s probation and ordered him to serve his 40-month prison sentence. The district court explained its decision to revoke as follows:

I do agree with your attorney . . . that your conduct—now a third probation violation—has put all of us in a very challenging position.

There was a presumptive commit in this case . . . , and I gave you an opportunity to demonstrate . . . that you were amenable to probation. I think the attorneys are very smart [in] that they know I have a soft spot in my heart for vets. . . .

I wanted you to succeed, but this is the third probation violation in less than six months. And as your attorney suggested, actions do speak louder than words. I do believe you were provided a wake-up call on December 16, 2019, at your second probation violation hearing when [the prosecutor] made it abundantly clear she would be pursuing execution of your sentence.

I do think that the [s]tate has met the *Austin* Factors by your failing to abstain. And I'm not saying necessarily that it was voluntary, that you—I just don't think you can abstain. And I don't think you can succeed on probation in the community because you have demonstrated over the last five months that you're not able to do so. I do think the need for confinement outweighs the policy favoring probation in this case.

I do think . . . when you are not sober, you are an angry person, and that puts the public at risk. But most important, I think the need for correctional treatment can best be provided and ensured if you are confined.

I also believe that given this is the third violation[,] . . . and I gave you a . . . dispositional departure[,] to not revoke . . . would undermine the severity.

Jackson appeals.

DECISION

“The [district] court has broad discretion in determining if there is sufficient evidence to revoke probation and should be reversed only if there is a clear abuse of that discretion.” *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). Before a district court revokes a defendant's probation, it “must (1) designate the specific condition or conditions that were violated; (2) find that the violation was intentional or inexcusable; and (3) find that need for confinement outweighs the policies favoring probation.” *Id.* at 250. We

review de novo whether a district court made the required *Austin* findings. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

I.

Jackson contends that the district court erred by revoking his probation because it did not find that his probation violations were “intentional and inexcusable.” Jackson cites *State v. Fritsche*, 402 N.W.2d 197 (Minn. App. 1987), for the proposition that a violation must be intentional. Although *Fritsche* states that a violation must be intentional, the holding actually states “intentional *or* inexcusable.” 402 N.W.2d at 198, 201 (emphasis added); see *Modtland*, 695 N.W.2d at 606 (“Once a court has made findings that a violation has occurred and has found that the violation was *either intentional or inexcusable*, the court must proceed to the third *Austin* factor” (emphasis added)); see also *Goldman v. Greenwood*, 748 N.W.2d 279, 283 (Minn. 2008) (stating “we normally interpret the conjunction ‘or’ as disjunctive rather than conjunctive”). We therefore consider whether the district court adequately found that Jackson’s violations were intentional *or* inexcusable.

District courts must make *Austin* findings to assure the creation of “thorough, fact-specific records setting forth [the] reasons for revoking probation.” *Modtland*, 695 N.W.2d at 608. In making the findings, district 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.” *Id.* District courts “should not assume that they have satisfied *Austin* by reciting the three factors and offering general, non-specific reasons

for revocation, as it is not the role of appellate courts to scour the record to determine if sufficient evidence exists to support the district court's revocation." *Id.*

Here, the district court expressly found that the *Austin* factors were satisfied based on Jackson's use of controlled substances while on probation. Specifically, the court found that Jackson repeatedly violated the terms of his probation and that he was apprised of the potential for revocation at his second probation-violation hearing. Jackson admitted that his violations were "either intentional or were inexcusable," and the district court accepted that admission. Although the district court stated that the violations were not "necessarily" voluntary, that statement is not inconsistent with a finding that the violations were intentional or inexcusable.

Given Jackson's admission, the district court's express finding that the *Austin* factors were satisfied, and the district court's explanation as a whole, we conclude that the district court's findings adequately addressed the second *Austin* factor.

II.

Jackson also contends that the district court erred by revoking his probation because the need for confinement does not outweigh the policies favoring probation. Once a district court finds an intentional or inexcusable violation of a specific probationary condition, it must "determine whether the need for confinement outweighs the policies favoring probation." *Id.* at 606. In doing so, the district court "must balance the probationer's interest in freedom and the state's interest in insuring his rehabilitation and the public safety." *Id.* at 606-07 (quotation omitted). The district court must bear in mind that "the purpose of probation is rehabilitation and revocation should be used only as a last resort

when treatment has failed.” *Id.* at 606 (quotation omitted). In deciding whether to revoke probation, a district court should consider whether “confinement is necessary to protect the public from further criminal activity by the offender,” “the offender is in need of correctional treatment which can most effectively be provided if he is confined,” or “it would unduly depreciate the seriousness of the violation if probation were not revoked.” *Id.* at 607 (quotations omitted).

The district court considered whether confinement was necessary to protect the public. It echoed the opinion of Jackson’s probation agent that Jackson is “an angry person” when he is not sober and that his lack of sobriety puts the public at risk. Jackson’s presentence-investigation report noted Jackson’s “extensive, violent criminal history.” Jackson stresses that his probation agent recommended continued probation. But that same agent noted “significant concern” regarding Jackson’s relapses and Jackson’s history of violent behavior when he uses controlled substances.

The district court also considered whether Jackson was in need of correctional treatment and stated that treatment could best be provided and ensured if he were confined. Jackson asserts that the record does not support such a finding. He argues that “[t]here was nothing in the record to support the court’s finding that correctional based treatment would be more effective than community-based treatment.” That argument is undercut by Jackson’s continued use of controlled substances while on probation despite his enrollment in community-based treatment programs. The record indicates that Jackson attempted dual-diagnosis chemical-dependency treatment in the past and was enrolled in community-based chemical-dependency treatment at the time of the current violations. Yet, he was

still unable to maintain sobriety. Given the circumstances, including three probation violations in less than six months for controlled-substance use despite attempts at community-based treatment, it was reasonable for the district court to conclude that Jackson could not succeed on probation in the community. *See Austin*, 295 N.W.2d at 248, 251 (affirming revocation stating, “it was not unreasonable to conclude that treatment had failed” because the defendant had been “offered treatment” but “failed to take advantage of the opportunity or to show a commitment to rehabilitation”).

Lastly, the district court considered whether not revoking probation would unduly depreciate the seriousness of the violations and concluded that it would. In doing so, the court noted that Jackson’s conviction “was a presumptive commit.” A district court may consider an underlying downward dispositional departure when deciding whether to revoke probation. *State v. Fleming*, 869 N.W.2d 319, 331 (Minn. App. 2015), *aff’d*, 883 N.W.2d 790 (Minn. 2016). In sum, the district court did not err by finding that the need for confinement outweighed the policies favoring probation.

Having concluded that the district court complied with the requirements of *Austin*, we affirm.

Affirmed.