

*This opinion is nonprecedential except as provided by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
A21-1004**

State of Minnesota,
Respondent,

vs.

Courtney Jean Petersen,
Appellant.

**Filed March 28, 2022
Affirmed
Worke, Judge**

Douglas County District Court
File No. 21-CR-11-449

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

Chad M. Larson, Douglas County Attorney, Tara J. Ulmaniec, Assistant County Attorney,
Alexandria, Minnesota (for respondent);

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

Considered and decided by Slieter, Presiding Judge; Worke, Judge; and Halbrooks,
Judge.*

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

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant argues that the district court abused its discretion by revoking her probation. We affirm.

FACTS

In October 2011, appellant Courtney Jean Petersen¹ pleaded guilty to two counts of second-degree burglary. *See* Minn. Stat. § 609.582, subd. 2(a)(1) (2010). Petersen failed to appear for sentencing and a warrant was issued for her arrest.

In September 2015, Petersen, now back in custody, was sentenced to concurrent sentences of 38 and 43 months for the two second-degree burglary convictions. The district court stayed the sentences and placed Petersen on probation for five years. As a condition of her probation, Petersen was ordered to pay \$9,115 in restitution to four victims. Petersen agreed to a payment plan which required her to pay \$15 monthly beginning December 1, 2015.

Peterson was transferred to a South Dakota probation program after she moved from Minnesota to South Dakota. The additional terms of Petersen's probation required her to make monthly telephone calls to her supervising agent. In 2018, Petersen's supervising agent requested an early discharge from probation, which was denied due to Petersen's failure to pay any restitution. In July and August 2020, Petersen failed to report to her scheduled appointments with her supervising agent. In August 2020, Petersen's

¹ Petersen is now known as Brown.

supervising agent conducted a home visit at Petersen's recorded address, found no one present, and determined Petersen to be "an absconder."

On August 5, 2020, a probation-violation report was submitted. The report alleged that Petersen had only "paid \$20.83 towards [the] \$9,115" in restitution. On August 27, an addendum to the report alleged that Petersen failed to remain in contact with her supervising agent. Another warrant was issued for Petersen's arrest.

On September 9, 2020, the district court held a probation-revocation hearing on the two violations alleged in the probation-violation report. Petersen failed to appear for this hearing. The district court noted that Petersen's file was currently on "warrant status," and that because of Petersen's failure to appear, "the warrant [would] remain active." The district court suspended the scheduling of any further proceedings until Petersen was in custody. Once Petersen was in custody, a bail hearing was held on March 25, 2021, and the district court ordered that Petersen was to remain in custody until her probation-revocation hearing.

On March 26, a second addendum to the probation-violation report alleged that Petersen had failed to remain law abiding. The addendum alleged that from May 2020 until March 2021, Petersen had committed five felony-level offenses in South Dakota. On May 12, a third addendum to the report confirmed the filing of three of the five criminal charges listed in the second addendum.

On May 13, 2021, Petersen appeared for an evidentiary hearing. Petersen admitted that she failed to stay in contact with her supervising agent due to relapsing with controlled

substances. Petersen denied the failure-to-pay-restitution and failure-to-remain-law-abiding violations.

The district court heard testimony that Petersen had made one restitution payment in this case in the amount of \$20.83 on June 11, 2020. The Minnesota Department of Revenue (MNDOR) collected other payments from Petersen in the amount of \$541.66 from July 2018 to August 2020. None of the funds collected by the MNDOR were received by the victims in this case.

The district court found that Petersen's failure to pay restitution was a violation of probation due to Petersen not making significant efforts to reduce the restitution balance. It also found that Petersen failed to remain in contact with her supervising agent based on her admission, but that the state failed to meet its burden of proof for the failure-to-remain-law-abiding violation because the additional felony charges had not been adjudicated.

The district court found that the two violations of probation were intentional and inexcusable. The record indicates that the long-term pattern of criminal behavior and the seriousness of the violations would be unduly depreciated if the sentences were not executed. The district court revoked Petersen's probation and executed the imposed sentences.

This appeal followed.

DECISION

A district court may revoke probation if the probationer violates any of the probation conditions. Minn. Stat. § 609.14, subd. 1(a) (2020). "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). “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. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

Before revoking probation, a district 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” (*Austin* factors). *Austin*, 295 N.W.2d at 250. In making its determination, 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 [the offender] is confined; or (iii) [not revoking probation] would unduly depreciate the seriousness of the violation” (*Modtland* subfactors). *State v. Modtland*, 695 N.W.2d 602, 607 (Minn. 2005). Whether the district court made the findings required for revocation of probation is a question of law that appellate courts review de novo. *Id.* at 605

Failure to pay restitution and failure to maintain contact

First, Petersen argues that there was no failure to pay restitution on her part. In support of her argument, she presented evidence from the MNDOR showing debt payments being collected totaling \$541.66. But a review of the record shows that Petersen owes money in other counties for criminal convictions involving other victims, and that none of the money collected was received by the four victims in this case. The district court noted that, “there [is] still over \$9,000 due and owing on this file,” and that other than making

one payment of \$20.83, none of the restitution in this case had been paid. The district court determined that one payment of \$20.83 did not constitute an attempt to make significant payment towards the outstanding restitution balance.

Petersen further asserts that the district court failed to make the specific finding that the failure to pay restitution was willful. But the district court found that rather than making restitution payments, Petersen willfully absconded from her probation, used illegal controlled substances, and acquired new criminal charges. The record also reflects Petersen's admission to absconding and using illegal controlled substances.

The district court did not abuse its discretion when it determined that Petersen intentionally and inexcusably failed to pay restitution and failed to keep in contact with her supervising agent.

Alternative remedies

Petersen argues that the district court abused its discretion by executing the sentence instead of imposing an alternative sanction. When an individual with a stay of execution admits a probation violation, the district court may either continue the offender on probation or revoke probation and execute the sentence. Minn. R. Crim. P. 27.04, subd. 3(2)(b). Under Minn. Stat. § 609.14, subd. 3(1) (2020), the district court may “place the defendant on probation or order intermediate sanctions . . . or impose sentence and order execution thereof.” As stated above, before revoking probation and executing a sentence, the district court must consider the *Austin* factors. Specifically, the third *Austin* factor requires the district court to “find that [the] need for confinement outweighs the policies favoring probation.” *Austin*, 295 N.W.2d at 250.

Under the third *Austin* factor, the probationer's interest in freedom must be balanced with the state's interests in ensuring the probationer's rehabilitation and public safety. *Modtland*, 695 N.W.2d at 606-07. District courts must base their decisions "on sound judgment and not just their will." *Id.* at 607 (quotation omitted). If the district court merely recites the factors, its findings may be inadequate; but its findings will be deemed adequate if the district court provides "substantive reasons for revocation." *Id.* at 608.

The district court has broad discretion in determining whether there is sufficient evidence to revoke probation. *Austin*, 295 N.W.2d at 249-50. Here, the district court specifically addressed its options after considering Petersen's probationary period was scheduled to end on September 15, 2020, that Petersen failed to appear for hearings, and that she was only back in custody so that an evidentiary hearing could be held for the alleged probation violations. *See* Minn. Stat. § 609.14, subd. 1(c) (2020) ("The proceedings to revoke the stay shall not be dismissed on the basis that the [revocation] hearing is conducted after the term of the stay or after the six-month period."). Before the district court executed Petersen's sentences, it considered two alternate remedies: releasing Petersen with credit for time served and a county-jail sanction. *See id.*, subd. 3(1) (stating that the district court may "order intermediate sanctions . . . or impose sentence and order execution thereof").

The district court concluded that executing the sentences was appropriate because: (1) Petersen admitted that she violated probation when she failed to remain in contact with her supervising agent, (2) the state proved that Petersen violated probation by failing to make significant efforts to reduce her restitution obligation, (3) Petersen absconded twice,

once during her probationary period, and (4) a long-term pattern of criminal behavior was present. Therefore, the district court's decision to execute the sentences was within its "broad discretion" and was not an abuse of that discretion. *See Austin*, 295 N.W.2d at 249-50.

Policies favoring probation

Petersen also argues that the district court abused its discretion based on the third *Austin* factor. Specifically, Petersen argues that because the district court failed to explicitly find that her need for confinement outweighed the policies favoring probation the district court abused its discretion.

The supreme court directed district courts to consider the three *Austin* factors when revoking probation and to make specific findings on each factor. *Id.* at 250. District courts should also consider the *Modtland* subfactors in making its determination to revoke probation. 695 N.W.2d at 607.

Here, the district court determined that the third *Modtland* subfactor supported revocation. *See id.* (stating that district courts should consider if its decision to not revoke probation "would unduly depreciate the seriousness of the violation"). The district court stated that if it did not execute the sentences "[i]t would way unduly depreciate the seriousness of the violations." The presence of only one *Modtland* subfactor is sufficient to support revocation. *See Goldman v. Greenwood*, 748 N.W.2d 279, 283 (Minn. 2008) (recognizing that appellate courts "normally interpret the conjunction 'or' as disjunctive rather than conjunctive").

In revoking probation, the district court appropriately balanced Petersen's interest in freedom and the state's interests in insuring Petersen's rehabilitation and public safety, and its decision was based on sound judgment rather than just its will. *See Modtland*, 695 N.W.2d at 607.

Affirmed.