

*This opinion is nonprecedential except as provided by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
A21-1038**

State of Minnesota,
Respondent,

vs.

Trejuan Dominic Miller,
Appellant.

**Filed May 16, 2022
Affirmed
Gaïtas, Judge**

Hennepin County District Court
File No. 27-CR-17-24839

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Gaïtas, Presiding Judge; Frisch, Judge; and Halbrooks,
Judge.*

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

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Trejuan Dominic Miller challenges the district court's decision to revoke his probation. We affirm.

FACTS

In November 2017, Miller entered into a plea agreement with respondent State of Minnesota. He pleaded guilty to third-degree criminal sexual conduct, admitting that he sexually penetrated a 15-year-old girl by putting his penis in her mouth. *See* Minn. Stat. § 609.344, subd.1(b) (2016). In exchange for his plea, the state recommended a probationary sentence, which was a downward dispositional departure from the sentencing guidelines. The district court followed the parties' plea agreement, staying execution of the presumptive 48-month prison sentence, and placing Miller on probation for three to five years. Among the conditions of probation, the district court ordered Miller to serve six months of local jail time, to follow all state and federal laws, to complete sex-offender treatment, and not to use or possess any firearms or ammunition.

While on probation, Miller was convicted of three new felony offenses. The first of these offenses was felony theft from the person of another. *See* Minn. Stat. § 609.52, subds. 2(a)(1), 3(3)(d)(i) (2016). At the trial in that matter, the state's evidence showed that Miller followed a woman to a dark, isolated street and stole her wallet in April 2018, just four months after he was placed on probation. A jury found him guilty, and the district court stayed execution of a 21-month prison sentence and furloughed him to treatment. Two weeks after starting treatment Miller absconded for over two months. During this period,

he failed to register as a predatory offender and missed court appearances. The police finally apprehended him after a high-speed car chase spanning seven miles. In addition to Miller, who was driving, there was a female passenger and a one-year-old child present in the vehicle.

These events led to Miller's second and third felony convictions while on probation. He pleaded guilty to failure to register as a predatory offender and was sentenced to 24 months in prison. *See* Minn. Stat. § 243.166, subd. 5(a), (b) (2018). And he pleaded guilty to fleeing a peace officer in a motor vehicle and was sentenced to a concurrent prison term of 17 months. *See* Minn. Stat. § 609.487, subd. 3 (2018).

In addition to committing new felony offenses, Miller violated other conditions of his probation. Between December 2017 and December 2018, his probation officer filed three probation violation reports. The first of these reports, filed in April 2018, alleged that Miller had been arrested for the theft-from-person offense, that he had engaged in nonconsensual dissemination of private sexual images, that he had committed a domestic assault, and that he had used nonprescribed medications. Given the unresolved theft-from-person charge, the district court deferred resolution of the probation violation matter pending disposition of that charge. Several months later, in August 2018, Miller's probation officer filed a second probation violation report alleging that Miller had continued to use drugs while residing at a sober living house and had left his drug treatment program. The district court again deferred resolution of the probation violation because the theft-from-person case was still pending. When the district court finally sentenced Miller for the theft-from-person offense in October 2018, it opted to again defer any action

on the probation violations because Miller had been charged with another new offense—failure to register as a predatory offender. At the sentencing hearing for the theft-from-person conviction, the district court ordered Miller to complete drug treatment, and Miller’s probation officer withdrew his earlier request to execute Miller’s 48-month sentence to give Miller another chance at treatment. But less than two months later, in December 2018, Miller’s probation officer filed a third probation violation report alleging that Miller had failed to complete drug treatment and that he had absconded from probation. The report also alleged that Miller had failed to register as a predatory offender.

Notwithstanding Miller’s new crimes and multiple probation violations, the district court allowed him to remain on probation following the third violation report—even while he served intervening prison sentences for failing to register as a predatory offender and fleeing police in a motor vehicle. Miller ultimately admitted to violating his probation by failing to remain law abiding. As a sanction, the district court extended Miller’s probationary term by five years or until he completed sex-offender treatment, whichever came first.

In December 2020—just eight months after Miller’s release from prison for his new convictions—his probation officer filed a fourth violation report. The report alleged that Miller had again failed to remain law abiding, citing numerous new charges, including first-degree drug sale, Minn. Stat. § 152.021, subd. 1(1) (2020), second- and fifth-degree drug possession, Minn. Stat. §§ 152.022, subd. 2(a)(1), .025, subd. 2(1) (2020), possession of ammunition and firearms, Minn. Stat. § 624.713, subd. 1(2), (10)(i) (2020), and two counts of third-degree criminal sexual conduct, Minn. Stat. § 609.344, subd. 1(c), (d)

(2020). Additionally, the report alleged that Miller had failed to complete sex-offender treatment and had possessed firearms. Miller requested a contested revocation hearing, which was held in May 2021.

Three witnesses testified for the state at the revocation hearing. First, Miller's probation officer detailed Miller's poor history of compliance on probation, including his three prior violations, his continued drug use, and his repeated failure to complete sex-offender treatment despite multiple opportunities. The probation officer explained that Miller was again discharged from treatment in November 2020 because he missed half of the required sessions. Given Miller's inability to complete sex-offender treatment on an outpatient basis, the probation officer opined that there were no other outpatient options available. Due to Miller's chronic noncompliance with the conditions of his probation, and his continued criminal activity, the probation officer recommended revocation of probation and execution of the stayed prison sentence.

Next, a sheriff's deputy testified about a search of Miller's apartment, which occurred while Miller was present. In a bedroom where Miller appeared to be staying officers found approximately 32 grams of cocaine; nearly 10 grams of methamphetamine; four guns, including an assault rifle; and live ammunition. Officers also seized evidence of drug sales, such as cash, digital scales, small plastic bags, and 13 cell phones. Subsequent DNA testing connected Miller to the assault rifle. DNA evidence also connected Miller to a fifth firearm that was seized from a storage locker rented by another resident of the apartment.

The state's final witness was a sergeant with the Minneapolis police department who had investigated allegations that Miller and another suspect had sexually assaulted two intoxicated women after accompanying them home from a bar. According to the sergeant, Miller's DNA matched sperm cells found in one complainant's vaginal swab and in one complainant's oral swab.

Miller also testified at the revocation hearing. He explained that he had missed some of his sex-offender-treatment sessions, which had been held remotely, because his access to a phone and the internet had been limited. Miller expressed his willingness to participate in sex-offender treatment going forward. He admitted that he resided in the apartment where the police found the drugs and guns.

Following the hearing, the district court issued an order finding that Miller had violated his probation by failing to complete sex-offender treatment and by possessing firearms and ammunition. The district court concluded that the state did not satisfy its burden of proving that Miller failed to remain law abiding by virtue of his new charges for drug and sex offenses. But it found that he failed to remain law abiding because he was convicted of three crimes—theft, failure to register as a predatory offender, and fleeing police in a motor vehicle—while on probation. The district court determined that Miller's violations were intentional and inexcusable and that the need for confinement outweighed the rehabilitative policies favoring probation. Accordingly, the district court revoked Miller's probation, executed the previously stayed 48-month sentence, and ordered a ten-year conditional-release period to follow the prison sentence.

Miller appeals.

DECISION

Before revoking a criminal defendant's probation, a district court must address three factors that the Minnesota Supreme Court articulated in *State v. Austin*, 295 N.W.2d 246 (Minn. 1980). The 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 need for confinement outweighs the policies favoring probation." *Austin*, 295 N.W.2d at 250 (Minn. 1980). The third factor requires a district court to further 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 he is confined; or (iii) it would unduly depreciate the seriousness of the violation if probation were not revoked." *Id.* at 251. A district court must meaningfully address the three *Austin* factors and not merely recite them or give "general, non-specific reasons for revocation." *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005).

Miller argues that the district court's decision to revoke his probation was unlawful because the district court made deficient findings on each of the *Austin* factors. Whether the district court made the findings required to revoke probation is a question of law, which we review de novo. *Id.* at 605. But a 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." *Austin*, 295 N.W.2d at 249-50.

A. The district court did not abuse its discretion by finding that Miller's probation violations were established by clear and convincing evidence.

Miller first argues that the district court abused its discretion by finding sufficient evidence of the alleged probation violations. The state must prove by clear and convincing

evidence that a defendant violated the terms and conditions of probation. *See* Minn. R. Crim. P. 27.04, subds. 2(1)(c)(b), 3(1), (2)(b) (permitting probation revocation when a district court finds clear and convincing evidence of a probation violation). Here, the district court found that the evidence established three separate violations: Miller failed to complete sex-offender treatment, he possessed firearms and ammunition, and he failed to remain law abiding.

1. Failure to complete sex-offender treatment.

Miller contends that the district court erred in determining that he failed to complete sex-offender treatment because there was additional time remaining in his probationary period for him to satisfy that condition. But he cites no authority to support his claim that the failure to comply with an affirmative probation requirement cannot be a violation if compliance can occur at a later time during the probationary period.

Moreover, the evidence at the revocation hearing established that the problem was not simply a matter of timing. The discharge report from Miller's most recent treatment program, which was introduced as an exhibit at the revocation hearing, stated that Miller was terminated from treatment because he missed three of six mandatory treatment sessions, "lacked follow through regarding treatment expectations, externalized blame for his actions, and was avoidant of assuming personal responsibility." It concluded that, "[g]iven his lack of motivation and difficulty maintaining treatment/supervisory expectations as an outpatient client, . . . Miller is not amenable to outpatient treatment at this time. As such, he remains an untreated sexual offender."

The district court also found that Miller’s probation officer “testified credibly regarding . . . Miller’s lack of motivation to abide by probation and change his behavior.” And the district court rejected Miller’s testimony regarding his inability to participate as not credible. We must defer to the district court’s credibility determinations. *See State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992) (recognizing that witness credibility and the weight of witness testimony are matters for the factfinder, and such determinations are given “great deference” on appeal).

Based on the record, the district court did not abuse its discretion in finding that Miller violated his probation by failing to complete sex-offender treatment.

2. Possession of firearms and ammunition.

Miller also argues that the evidence was insufficient to establish by clear and convincing evidence that he possessed firearms and ammunition. He contends that the district court applied the wrong standard of proof. And he argues that the evidence did not satisfy the proper—and more onerous—standard of proof.

Miller’s argument is primarily based on the following finding in the district court’s order: “The evidence ties . . . Miller, by a *preponderance of the evidence*, to at least two of the firearms found at his residence.” (Emphasis added.) He correctly observes that the standard of proof for a probation violation is clear and convincing evidence, and not the lower preponderance-of-the-evidence standard. *See* Minn. R. Crim. P. 27.04, subds. 2(1)(c)(b), 3(1), (2)(b); *State v. Cottew*, 746 N.W.2d 632, 638 (Minn. 2008) (“[T]he district court must determine whether there is clear and convincing evidence that a condition of probation has been violated.”).

The district court erred by citing the wrong standard in its order. But, for two reasons, we are convinced that the district court was aware of the standard and correctly applied it in finding that Miller possessed firearms and ammunition in violation of his probation.

First, the district court repeatedly cited to the correct clear-and-convincing-evidence standard throughout its order, including in its discussion of the firearms violation. It stated, “The State established by clear and convincing evidence that . . . Miller violated his probation when weapons and ammunition were found at his residence [He] was specifically instructed at sentencing that, while on probation, he was prohibited from using or possessing firearms, ammunition, or explosives.”

Second, the evidence at the probation revocation hearing amply supported a finding that clear and convincing evidence established Miller’s possession of firearms and ammunition. Four guns and ammunition were found in the bedroom of Miller’s apartment while he was present. The firearms were mostly in plain view. At least one of them was next to his social security card. The guns were also near Miller’s gold tooth, which he asked the police to retrieve during the search. One gun from the bedroom and another gun from an associated storage locker contained a mixture of DNA that included Miller’s DNA.¹

¹ The DNA analysis report notes that a third gun was tested but did not contain a DNA profile that met the minimum criteria for interpretation. DNA test results on a fourth firearm were not available at the hearing because the gun had been sent to a different laboratory for analysis.

We also reject Miller’s argument that the more stringent circumstantial-evidence standard of review, which an appellate court applies in reviewing the sufficiency of the evidence underlying a *conviction* based on circumstantial evidence, applies in this context. There is no authority for this proposition. And we note that a criminal trial and a probation revocation hearing are not analogous proceedings. The state bears a higher burden of proof to obtain a conviction. *See State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017) (applying circumstantial-evidence standard of review to consider whether state’s evidence established defendant’s guilt beyond a reasonable doubt).

The record supports the district court’s finding that there was clear and convincing evidence that Miller possessed firearms and ammunition. Thus, the district court did not abuse its discretion by determining that Miller violated this condition of his probation.

3. Failure to remain law abiding.

Finally, Miller argues that the district court abused its discretion by relying on his convictions for theft, failure to register as a predatory offender, and fleeing police in a motor vehicle as a basis for revoking his probation. He argues that he was not provided notice before the revocation hearing that these convictions would be used to prove that he failed to remain law abiding. Miller also contends that because the convictions were previously used to establish a probation violation that resulted in sanctions, it was improper for the district court to again rely on these convictions to establish a violation here—a practice that potentially implicated the constitutional proscription against double jeopardy. *See* U.S. Const. amend. V; Minn. Const. art. I, § 7; *State v. Hanson*, 543 N.W.2d 84, 86 (Minn. 1996) (“The Double Jeopardy Clauses of the United States Constitution and the

Minnesota Constitution protect a criminal defendant from . . . multiple punishments for the same offense.”). At oral argument, the state conceded that it was improper for the district court to again rely on the convictions as a basis for a violation here.

Even if we assume without deciding that the district court erred in this respect, the error would not require reversal of the district court’s ultimate decision to revoke Miller’s probation. The record fully supports the district court’s determination that Miller violated two other conditions of his probation. Given the serious nature of those violations, and the district court’s remarks in considering whether revocation was warranted under the third *Austin* factor, we have no concern that the error affected the district court’s decision to revoke Miller’s probation.²

B. The district court did not abuse its discretion by finding that Miller’s probation violations were intentional or inexcusable.

Miller next challenges the district court’s determination on the second *Austin* factor. This factor requires the district court to find that a probation violation was “intentional or inexcusable” before revoking probation. *Austin*, 295 N.W.2d at 250. Miller argues that the record does not support a finding that his failure to complete sex-offender treatment

² Miller argues that a remand to the district court is necessary because the district court may have decided not to revoke his probation had there been just two violations. In support of this argument, he cites a nonprecedential opinion where we remanded to allow the district court to reconsider its disposition after concluding that there was insufficient evidence to support one of three probation violations. We are not bound by nonprecedential opinions. See *Jackson ex rel. Sorenson v. Options Residential, Inc.*, 896 N.W.2d 549, 553 (Minn. App. 2017) (“[W]e are bound by precedent established in the supreme court’s opinions and our own published opinions.”). Nonetheless, we have reviewed the case cited and conclude that it is factually distinguishable from the circumstances in Miller’s case.

was intentional or inexcusable. And he contends that the district court failed to explicitly find that his possession of firearms was intentional or inexcusable.

We disagree with both arguments advanced by Miller. The district court found that Miller “presented no credible legal excuse for the probation violations in this matter,” and the record supports this finding. Although Miller offered excuses for his failure to attend sex-offender-treatment sessions, the district court did not find his testimony credible. Instead, the district court accepted the testimony of Miller’s probation officer that Miller simply lacked motivation to change his behavior. The district court also referenced Miller’s discharge report—one of the state’s exhibits—which described Miller’s general lack of engagement with sex-offender treatment. As to Miller’s firearms possession, the district court observed that the record established that Miller “was specifically instructed” that “he was prohibited from using or possessing firearms.” But, the district court noted, law enforcement found multiple guns in Miller’s apartment, including a gun with Miller’s DNA. Because the district court adequately addressed the second *Austin* factor, and the record supports its finding that Miller’s probation violations were inexcusable, the district court did not abuse its discretion.³

³ Miller also argues that, to the extent the district court found that his failure to remain law abiding was intentional or inexcusable, the district court erred. We do not address this argument because we have concluded that Miller’s two other violations of probation—his failure to complete sex-offender treatment and his possession of firearms—provided the district court with sufficient bases for revoking his probation.

C. The district court did not abuse its discretion by finding that the need for confinement outweighed the policies favoring probation.

Finally, Miller argues that the district court abused its discretion in addressing the third *Austin* factor—whether the need for confinement outweighed any policies favoring continued probation. *See Austin*, 295 N.W.2d at 250. As noted, this factor requires a district court to consider several subfactors—specifically, 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 he is confined; or (iii) it would unduly depreciate the seriousness of the violation if probation were not revoked.” *Id.* at 251. A district court must also appreciate that “[t]he purpose of probation is rehabilitation and revocation should be used only as a last resort if treatment has failed.” *Modtland*, 695 N.W.2d at 606.

Regarding the third *Austin* factor, the district court stated:

Given the volume and repetitive nature of . . . Miller’s criminal conduct (all occurring in a relatively short period of time while he was out of custody since December 19, 2017), the need for confinement outweighs the rehabilitative policies favoring probation. It is clear to the Court that treatment has failed in this case. *Modtland*, 695 N.W.2d at 606. The Probation Violation Report dated December 21, 2020, details the extensive history of this case. In sum, many attempts have been made to rehabilitate . . . Miller: to abstain from drugs, to abide by State and Federal criminal laws, and to get him on a legitimate path. The range of interventions over three years include various treatment programs (in-patient and out-patient), sober housing, jail time, individual and group therapy at Alpha, chemical health assessments, and more.

. . . Miller began breaking the law just months after he was released from jail in this case and he has repeatedly returned to destructive and anti-social behavior.

Miller first argues that the district court abused its discretion because it did not expressly discuss the three subfactors. While the district court may not have cited to the exact language of the subfactors, we conclude that its findings implicitly addressed each of them. The district court emphasized Miller's continued destructive and antisocial behavior despite multiple interventions, touching on the public-safety risk of continued probation. The district court remarked on Miller's repeated treatment failures and noted that "it is clear . . . that treatment has failed in this case." And the district court observed that, despite many attempts at rehabilitation, Miller "began breaking the law just months after he was released from jail" and never stopped, recognizing that continued probation would not adequately address Miller's noncompliance.

Miller also argues that the record does not support the district court's ultimate determination that the need for confinement outweighed the policies favoring probation. We disagree. Based on our review of the record, the district court was well within its discretion to conclude that the need for confinement after Miller's fourth violation of the conditions of his probation outweighed any policies favoring continued probation. Thus, the district court did not abuse its discretion in revoking Miller's probation.

Affirmed.