

*This opinion is nonprecedential except as provided by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
A21-1668**

State of Minnesota,
Respondent,

vs.

James Michael Peters, III,
Appellant.

**Filed August 8, 2022
Affirmed
Gaïtas, Judge**

Polk County District Court
File Nos. 60-CR-18-1968, 60-CR-18-2462

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

Greg Widseth, Polk County Attorney, Scott A. Buhler, First Assistant County Attorney,
Crookston, Minnesota (for respondent)

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

Considered and decided by Bryan, Presiding Judge; Gaïtas, Judge; and Klaphake,
Judge.*

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

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant James Michael Peters, III, appeals from the district court's order revoking his probation, arguing that the district court abused its discretion in determining that the need for confinement outweighs the policies favoring continued probation. We affirm.

FACTS

In October 2018, police stopped Peters for a traffic violation and, after discovering methamphetamine in his car, arrested him. Respondent State of Minnesota charged Peters with second-degree sale of methamphetamine in a school zone, Minn. Stat. § 152.022, subd. 1(7)(ii) (2018); third-degree possession of methamphetamine in a school zone, Minn. Stat. § 152.023, subd. 2(a)(6) (2018); and misdemeanor driving while impaired (DWI), Minn. Stat. § 169A.20, subd. 1(7) (2018). When Peters missed a court date, the state also charged him with felony failure to appear in court. Minn. Stat. § 609.49, subd. 1(a) (2018).

Peters eventually pleaded guilty to third-degree possession of methamphetamine in a school zone, misdemeanor DWI, and felony failure to appear. Although Peters did not appear at his first scheduled sentencing hearing, he was ultimately sentenced for the offenses in December 2019. The district court imposed a 27-month stay of execution for the third-degree possession conviction, a year-and-a-day stay of execution for the failure to appear conviction, and a 90-day executed sentence for the DWI conviction. For the felony offenses, the district court placed Peters on supervised probation for ten years.

In February 2021—less than two years into Peters's probationary period—corrections filed a probation-violation report and obtained a warrant for Peters's arrest.

The report alleged that Peters had been charged with multiple offenses in North Dakota between December 2019 and January 2021, including preventing arrest, criminal mischief, fleeing or attempting to elude a police officer, driving with a suspended license, and unlawful possession of drug paraphernalia. Additionally, the report alleged that Peters had failed to contact his probation officer; failed to report the new offenses to his probation officer; failed to provide his probation officer with his current address, phone number, and employment; and failed to complete a chemical assessment.

Peters eventually appeared at a probation violation hearing and admitted the alleged violations. The district court allowed Peters to continue on probation but ordered him to serve 135 days in custody as a sanction.

In September 2021, corrections filed a second probation-violation report. The report alleged that Peters had been charged with additional offenses in North Dakota, failed to maintain contact with his probation officer, failed to schedule a chemical-dependency assessment, and admitted to using marijuana, fentanyl, and methamphetamine.

Peters admitted the alleged violations. At the disposition hearing, the state requested execution of Peters's stayed sentences. The state noted that Peters had violated his probation early and often, acquiring ten new criminal cases in North Dakota since sentencing. Peters asked the district court for continued probation with local jail time and chemical dependency treatment. He explained the personal circumstances that had led him to continue using drugs while on probation.

Concluding that the need for confinement outweighed the policies favoring continued probation, the district court revoked Peters's probation. The district court executed both stayed prison sentences.

Peters 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). But whether the district court made the findings required to revoke probation is a question of law, which the appellate court reviews de novo. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

Before revoking a criminal defendant's probation, a district court must address three factors articulated in *Austin*. 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. A district court should clearly address these three *Austin* factors and not merely recite them or give "general, non-specific reasons for revocation." *Modtland*, 695 N.W.2d at 608. And a district court must be cognizant of the fact that "the purpose of probation is rehabilitation and revocation should be used only as a last resort [if] treatment has failed." *Id.* at 606 (quotation omitted).

Peters argues that the district court abused its discretion in determining that the need to confine him outweighed the policies favoring probation. This third *Austin* factor

requires a district court to address 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.” *Austin*, 295 N.W.2d at 251. A district court may revoke probation upon proof of only one of the subfactors. *Id.*

In addressing the third *Austin* factor, the district court stated:

The Court will confirm that we are at a state where I believe that your confinement . . . outweighs policies favoring probation for these reasons. First of all, I do believe we have to protect the public from further criminal activity. You’ve had umpteen convictions for other offenses since you’ve been on probation. The Court will note that [many] of your violations that have brought you before the Court here, especially recently, are drug related. The Court always reminds everyone in court that there is an underpinning of a system that supports the drug trade in our area. It’s a dangerous group of people and it creates a scourge on our communities. So, confinement is necessary to protect the public and its citizens from not only specific criminal activity, but general activity like the use of drugs because of that broad network and its dangerousness. The Court does believe you, sir, are in need of more treatment than we can seem to offer in the community. We’ve tried to entice you to engage in programming and you haven’t really done that effectively. I believe that the Commissioner has programs for you that can be delivered more appropriately, and hopefully help you with a longtime result. One thing I worry about is if we just keep dumping larger chunks of local time on you is all that does is create a situation where at some point, you’ll go down to the Commissioner, check in at St. Cloud and get put out again and not really get any benefit from the Commissioner. The Court will also finally conclude that it would unduly depreciate the seriousness of your violations if I didn’t revoke and remand you to the Commissioner. Other people on probation do quite well. People who make the commitment and obtain chemical health and mental health programming with hardly a thing on their radar. It literally

takes[, my] gosh, an unbelievable amount of time to just review your violation reports and all the information in them about violations and other criminal conduct. So, I can't be fair to other offenders and not execute your sentence.

Peters contends that the district court's discussion of the third *Austin* factor was merely a "superficial recitation," providing only "general, non-specific reasons for finding that Peters's sentence should be executed." We disagree. The district court specifically explained how Peters's conduct implicated each of the three subfactors. As to the first subfactor—whether confinement is necessary to protect the public—the district court noted that Peters had continued to be involved in significant drug activity while on probation, supporting a particularly dangerous drug trade in the local community. As to the second subfactor, the district court was required to consider whether "the offender is in need of correctional treatment which can most effectively be provided if he is confined." *Id.* The district court did so, observing that Peters had failed to engage in treatment while in the community and that treatment would be more effectively delivered in prison. And the district court appropriately evaluated the third subfactor—whether continued probation would unduly depreciate the seriousness of the violations. The district court determined that because Peters had committed multiple probation violations, including new criminal offenses, it would be unfair to continue him on probation rather than to execute his sentences.

The district court adequately addressed the third *Austin* factor, making findings on each of the three subfactors. Accordingly, the district court did not abuse its discretion in revoking Peters's probation.

Affirmed.