

*This opinion is nonprecedential except as provided by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
A22-0096**

State of Minnesota,
Respondent,

vs.

Danielle Marie Dvorsak,
Appellant.

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

Stearns County District Court
File No. 73-CR-19-8570, 73-CR-19-8691

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, John Donovan, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Worke, Judge; and Johnson,
Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant argues that the district court abused its discretion when it revoked her
probation based on an impermissible “reflexive” reaction. We affirm.

FACTS

In October 2019, respondent State of Minnesota charged appellant Danielle Marie Dvorsak with two controlled-substance crimes: first-degree possession of more than 50 grams of methamphetamine in violation of Minn. Stat. § 152.021, subd. 2(a)(1) (2018), and first-degree aiding and abetting the sale of more than 17 grams of methamphetamine in violation of Minn. Stat. § 152.021, subd. 1(1) (2018). *See* Minn. Stat. § 609.05, subd. 1 (2018) (“A person is criminally liable for the crime committed by another if the person intentionally aids . . . the other to commit the crime.”). The state alleged that Dvorsak possessed over 400 grams of methamphetamine and that Dvorsak provided methamphetamine to a third party who then sold over 25 grams of the substances to a confidential informant.

In August 2020, Dvorsak and the state reached a plea agreement, which provided in pertinent part, that Dvorsak would argue for a dispositional departure at sentencing. Between the date of the plea hearing and the sentencing hearing, Dvorsak committed multiple conditional-release violations by failing to take, and by submitting, positive drug tests.

In March 2021, the district court held a sentencing hearing. Dvorsak moved for a downward dispositional departure. The state opposed Dvorsak’s motion, arguing that her repeated conditional-release violations demonstrated that she was not particularly amenable to probation. The district court granted Dvorsak’s motion for dispositional departure, stayed the execution of a 126-month sentence, and placed Dvorsak on probation for 30 years. As conditions of her probation, the district court ordered Dvorsak to abstain

from using illegal drugs, submit to regular drug tests as ordered by her probation agent, complete and follow the recommendations of a chemical-dependency evaluation, and complete chemical-dependency treatment. The district court noted that “you’re going to be on a very short leash and you’re going to have to dot every ‘I’ and cross every ‘T.’” The district court also stated that it wanted to be notified immediately if Dvorsak violated any of these probationary conditions.

In April 2021, approximately one month after sentencing, probation filed a probation-violation report alleging that Dvorsak tested positive for methamphetamine, was unsuccessfully discharged from chemical-dependency treatment, and failed to submit to drug testing. In May 2021, the district court held a hearing, and Dvorsak admitted to committing the violations. Although the state argued that the district court should revoke Dvorsak’s probation, the district court imposed a 60-day jail consequence and continued Dvorsak on probation pursuant to the same terms and conditions.

In September 2021, probation filed another probation-violation report, alleging that Dvorsak tested positive for methamphetamine on multiple occasions, failed to submit viable samples for drug testing, and again failed to complete chemical-dependency treatment. On October 1, probation filed an addendum setting forth additional allegations that Dvorsak continued to violate the conditions of probation since the filing of the September report.

On October 27, 2021, the district court held a hearing, and Dvorsak again admitted that she had violated the terms of her probation. The state again argued that the district court should revoke probation because the need for her confinement outweighed the

policies favoring probation. Dvorsak argued for an interim jail sanction so that she could remain on probation to attend another chemical-dependency treatment program.

The district court revoked Dvorsak's probation. Pertinent to this appeal, in analyzing whether policy considerations outweighed the need for confinement, the district court noted that it had granted Dvorsak two prior opportunities to succeed on probation and then commented that Dvorsak's situation was "kind of like the old saying, three strikes and you're out." The district court then concluded that Dvorsak's failure to take advantage of the resources available to her and her continued use of illicit substances established that the need for confinement outweighed the policies favoring probation because remaining on probation would unduly depreciate the seriousness of her offense. The district court executed Dvorsak's sentence of 126 months' imprisonment. Dvorsak appeals.

DECISION

"The [district] court has broad discretion in determining if there is sufficient evidence to revoke probation," and we reverse "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 if it misapplies the law, makes findings that are unsupported by the record, or resolves the discretionary question in a manner that is contrary to logic and the facts on record. *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022).

Before a district court can revoke 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 [the] need for confinement outweighs the policies favoring

probation.” *Austin*, 295 N.W.2d at 250. Dvorsak challenges the district court’s finding as to the third factor.

In determining whether the need for confinement outweighs the policies favoring probation, a district court must balance the probationer’s interest in freedom against the state’s interests in ensuring the probationer’s rehabilitation and public safety. *State v. Modtland*, 695 N.W.2d 602, 606-07 (Minn. 2005). District courts must base their decisions “on sound judgment and not just their will.” *Id.* at 607 (quotation omitted). Decisions must also not be based on “reflexive reaction[s]” due to “technical violations.” *Austin*, 295 N.W.2d at 251 (quotation omitted). In making this determination, district courts 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*, 695 N.W.2d at 607 (quotation omitted). The presence of one subfactor is sufficient to support revocation. *See id.* A district court makes adequate findings when it sets forth “substantive reasons for revocation.” *Id.* at 608.

Here, Dvorsak argues that the district court’s statement “three strikes and you’re out” demonstrates that the revocation of probation was a reflexive reaction to the number of failed opportunities that the district court afforded to Dvorsak to succeed under probationary supervision. We disagree. Although Dvorsak isolates this colloquial statement by the district court, she ignores the remainder of the considered, substantive reasons cited by the district court in support of its decision to revoke probation. The district

court specifically stated at sentencing that “you’re going to be on a very short leash” and stated at the October probation-revocation hearing that it was “very concerned with [Dvorsak’s] continued involvement with chemicals” and her behavior to “not follow what’s [been] recommended by the professionals.” In light of this specifically identified behavior while on probation, the district court found that a decision not to revoke Dvorsak’s probation would “unduly depreciate the seriousness of the underlying charges.” Our review of the totality of the district court’s statements therefore shows that the district court did not base its revocation decision on a “reflexive reaction” connected to the number of times that Dvorsak violated the terms of her probation or her receiving a dispositional departure.¹ Rather, the district court based its revocation decision on Dvorsak’s repeated use of illegal substances and her inability to complete chemical-dependency treatment successfully. These are substantive reasons sufficient to support revocation. *Id.* We therefore discern no abuse of discretion by the district court in its decision to revoke probation.

Affirmed.

¹ We note that a district court may consider an underlying downward dispositional departure when deciding whether to revoke probation. *See State v. Fleming*, 869 N.W.2d 319, 331 (Minn. App. 2015), *aff’d*, 883 N.W.2d 790 (Minn. 2016).