

*This opinion is nonprecedential except as provided by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
A22-0649**

State of Minnesota,
Respondent,

vs.

Noah Rogers,
Appellant.

**Filed January 9, 2023
Reversed and remanded
Slieter, Judge**

Aitkin County District Court
File No. 01-CR-18-574

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

James Ratz, Aitkin County Attorney, Aitkin, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Eva F. Wailes, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Slieter, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant challenges the revocation of his probation, arguing that the district court
failed to make sufficient findings to conclude that the need for confinement outweighs the

policies favoring probation. Because the district court did not provide a case-specific analysis of the third *Austin* factor and the *Modtland* subfactors, we reverse and remand.¹

FACTS

In October 2018 and pursuant to a plea agreement, appellant Noah Rogers pleaded guilty to burglary in the third degree, in violation of Minn. Stat. § 609.582, subd. 3 (2016). The plea agreement provided for a delay of sentencing to allow Rogers to complete chemical-dependency treatment. And if he successfully completed treatment, Rogers would receive a stay of execution of 30 months' imprisonment, a dispositional departure.

Rogers successfully completed treatment and, therefore, the district court stayed execution of a 30-month prison term for up to five years of probation. Rogers's sentence was subject to several standard conditions, including completion of an outpatient treatment program and no use of alcohol or controlled substances.

In November 2019, Rogers's corrections agent filed a probation-violation report based on Rogers's admitted controlled-substance use, positive drug tests, discharge from a treatment program for nonattendance, and violations of other standard probation conditions. Based upon the corrections agent's recommendation, the district court issued a warrant for Rogers's arrest in November 2019. Rogers was not apprehended until he was taken into custody and charged with two new offenses in November 2021. After Rogers's arrest, he admitted to using a controlled substance.

¹ *State v. Austin*, 295 N.W.2d 246 (Minn. 1980); *State v. Modtland*, 695 N.W.2d 602, (Minn. 2005).

In January 2022, Rogers admitted to the probation violations. During the contested disposition hearing held two days later, the corrections agent, the sole witness, testified consistent with the information from her probation-violation reports.

In a written order, the district court found that Rogers violated the terms of his probation, revoked Rogers's probation, and executed the 30-month stayed prison sentence. Rogers appeals.

DECISION

In deciding whether to revoke probation, the Minnesota Supreme Court has identified three factors, known as the *Austin* factors, that a district court must consider and make specific findings on before revoking probation. *See Austin*, 295 N.W.2d at 250. The *Austin* factors require a district court to (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.* Whether a district court has made the required findings for each *Austin* factor is a question of law that this court reviews *de novo*. *Modtland*, 695 N.W.2d at 605; *State v. Fleming*, 869 N.W.2d 319, 331 (Minn. App. 2015), *aff'd on other grounds*, 883 N.W.2d 790 (Minn. 2016). However, “[t]he trial 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.

Rogers challenges the district court's findings only as to the third *Austin* factor, arguing that the district court's order revoking his probation must be reversed because the district court “failed to properly find that the need for confinement outweighed the policies

in favor of probation, and the record evidence does not support such a finding.” *See id.* at 250. When analyzing this factor, district courts must balance “the probationer’s interest in freedom and the state’s interest in insuring his rehabilitation and the public safety.” *Id.* A district court must be mindful that the purpose of probation is rehabilitation, and revocation should be a last resort. *Modtland*, 695 N.W.2d at 606. But the need for confinement outweighs the policies favoring probation if at least one of three subfactors is met:

- (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 607 (quoting *Austin*, 295 N.W.2d at 251). We refer to these as the *Modtland* subfactors.

However, “[district] courts should not assume that they have satisfied *Austin* by reciting the three factors and offering general, non-specific reasons for revocation.” *Id.* at 608. Probation revocation “cannot be a reflexive reaction to an accumulation of technical violations but requires a showing that the offender’s behavior demonstrates that he or she cannot be counted on to avoid antisocial activity.” *Austin*, 295 N.W.2d at 251 (quotation omitted). Therefore, district courts must make “thorough, fact-specific records” and “seek to convey their substantive reasons for revocation and the evidence relied upon.” *Modtland*, 695 N.W.2d at 608.

The district court order revoking Rogers’s probation identifies undisputed facts and repeats the sentencing terms, the alleged violations identified in the probation-violation

reports, facts about Rogers’s November 2021 arrest, and key parts of the testimony provided by the corrections agent during the contested disposition hearing. In concluding that the third *Austin* factor was met, the district court stated:

That the need for confinement outweighs the policies favoring probation. Confinement is necessary to protect the public from further criminal activity by the Defendant. The Defendant is in need of correctional treatment which can most effectively be provided if Defendant is confined. . . . Not revoking Defendant’s probation would unduly depreciate the seriousness of the violations.

Though the district court’s conclusions of law recited the third *Austin* factor and the three related *Modtland* subfactors, it provided no reasons or supporting evidence indicating why confinement was necessary to protect the public from Rogers, why treatment would be more effective with Rogers confined, or how the seriousness of Rogers’s violations would be depreciated if he was allowed to remain on probation.² In sum, the district court failed to convey the “substantive reasons for revocation and the evidence relied upon,” as required by *Modtland*. *Id.*

We reverse the district court’s probation-revocation decision and remand for the district court to make sufficient findings in accordance with the requirements of *Austin* and *Modtland*.

Reversed and remanded.

² As an example, a review of the record reveals that, prior to the contested disposition hearing, Rogers completed a “comprehensive assessment” with Minnesota Adult & Teen Challenge. However, the district court did not reference the assessment in its order revoking Rogers’s probation.