

*This opinion is nonprecedential except as provided by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
A22-1018**

State of Minnesota,
Respondent,

vs.

Bert Strom,
Appellant.

**Filed February 21, 2023
Affirmed
Reilly, Judge**

Lyon County District Court
File No. 42-CR-16-370

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

Rick Maes, Lyon County Attorney, Abby Wikelius, Assistant County Attorney, Marshall,
Minnesota (for respondent)

Lynne A. Torgerson, Minneapolis, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Bjorkman, Judge; and Reilly,
Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant challenges the district court's revocation of his probation for third-degree assault, arguing that the district court abused its discretion in determining that the need for confinement outweighed the policies favoring continued probation. We affirm.

FACTS

In April 2016, appellant Bert Strom pushed his then-wife, T.S., down the stairs in their home. Arresting police officers found a pipe in Strom's pocket that smelled of marijuana. Strom had previously been convicted of domestic assault three times in ten years. Respondent State of Minnesota charged Strom with third-degree assault, two charges of domestic assault, and possession of drug paraphernalia. Strom entered a plea of guilty to third-degree assault and the remaining charges were dismissed under the plea agreement. The district court stayed imposition of Strom's 15-month sentence and placed him on probation for three years with certain conditions. The conditions required Strom to obtain permission from his probation officer before leaving the state. Strom was also required to remain law abiding and abstain from using or possessing alcohol or drugs, among other conditions.

Strom missed a scheduled appointment with his probation officer in June 2018. The next day, an officer in Illinois contacted Strom's probation officer to report that Strom was in custody in Illinois for domestic battery. Strom had been drinking with T.S., who was then living in Illinois. Strom became angry and threw a can, hitting his 11-year-old son in the head.¹ The Department of Corrections filed a probation violation report alleging that Strom failed to obtain permission from his probation officer to leave the state, failed to meet with his probation officer as directed, failed to abstain from the use of alcohol, and failed to remain law abiding. The report also alleged that Strom failed to abstain from the

¹ The criminal charges stemming from this incident were dismissed.

use of alcohol on a previous occasion in July 2017. The probation officer recommended vacating the stay of imposition and executing Strom's 15-month sentence.

Strom was arrested a second time in Illinois in July 2018. T.S. reported that she had been drinking with Strom when he began screaming obscenities at her. T.S. stated that Strom placed one hand over her mouth and nose to block her from breathing and placed his other hand on her neck. Strom was charged with felony domestic battery and received a 15-month prison sentence for this offense in Illinois.

The district court held probation violation hearings in May and June 2022, following Strom's release from prison in Illinois and his return to Minnesota. Strom admitted to the violations on the record. The district court determined that Strom provided an acceptable factual basis and that there was clear and convincing evidence that he violated probation for each ground alleged in the violation report. The district court executed Strom's sentence and committed him to prison for 15 months.

Strom now appeals.

DECISION

Strom claims the district court abused its discretion by revoking his probation and executing his prison sentence. Before revoking probation, 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 [the] need for confinement outweighs the policies favoring probation." *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). Under the third factor, the district court must "balance the probationer's interest in freedom and the state's interest in insuring his rehabilitation and the public safety." *State*

v. Modtland, 695 N.W.2d 602, 607 (Minn. 2005) (quotation omitted). The third factor requires the district court to 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.

Austin, 295 N.W.2d at 251 (quotation omitted).

The district court only needs to find one subfactor to support revocation. *See Goldman v. Greenwood*, 748 N.W.2d 279, 283 (Minn. 2008) (recognizing that “we normally interpret the conjunction ‘or’ as disjunctive rather than conjunctive”). “The [district] court has broad discretion in determining if there is sufficient evidence to revoke probation,” and we will only reverse “if there is a clear abuse of that discretion.” *Austin*, 295 N.W.2d at 249-50. Whether the district court made the required findings to revoke probation is a question of law, which we review de novo. *Modtland*, 695 N.W.2d at 605.

Strom does not challenge the district court’s findings on the first two *Austin* factors. Instead, he claims the need for confinement does not outweigh the policies favoring probation and that continuing his probation would not unduly depreciate the seriousness of the violations.

The district court determined that the need for confinement outweighed the policies favoring probation under the third *Austin* factor. Specifically, the district court found that

it would unduly depreciate the seriousness of the violation if the court did not revoke probation. The district court explained:

I do find that [the violation] is serious . . . , because Mr. Strom failed to comply with virtually . . . all aspects of his probationary requirements, not only in remaining law-abiding and abstaining, . . . but the very basic requirement that he maintain contact with his probation agent and . . . attend appointments as directed and not leave the State of Minnesota without permission. [S]o I find that these violations are serious . . . , because Mr. Strom failed to comply with those very basic and fundamental expectations of . . . probation. [T]herefore I do find that the *Austin* factors . . . have been met.

We discern no abuse of discretion in the district court’s decision. A district court’s decision to revoke probation must not be “a reflexive reaction to an accumulation of technical violations.”² *Austin*, 295 N.W.2d at 251 (quotation omitted). Here, the district court ordered Strom to remain law abiding and abstain from using or possessing alcohol or drugs. The district court also required him to obtain permission from his probation officer before leaving the state. In June 2018, Strom missed an appointment with his probation officer. The officer later learned that Strom travelled to Illinois, drank alcohol with T.S., the victim in this case, and threw a can at his son. Then, Strom was again arrested in Illinois in July 2018 for physically abusing T.S. by placing his hands on her mouth, nose, and neck to prevent her from breathing. Strom received a 15-month prison sentence for this offense.

² A technical violation is defined as “any violation of a court order of probation, except an allegation of a subsequent criminal act that is alleged in a formal complaint, citation, or petition.” Minn. Stat. § 244.196, subd. 6 (2022). During oral argument, Strom’s attorney agreed that Strom’s violations were not “technical violations.”

Strom's violations were not merely "technical violations" and constituted substantial violations of his probation.

Strom argues confinement is unnecessary because he has done well on parole and has committed no parole violations since his release from prison in Illinois. Strom notes that he has attended counseling, gained employment, passed drug and alcohol tests, and completed substance abuse and anger management assessments. Strom's parole officer in Illinois and his alcohol and drug counselor submitted letters in support of Strom. The district court reviewed these submissions. The district court emphasized that it was considering both "the negative actions of Mr. Strom but also the good." The district court also recognized Strom's attempts to improve himself. Yet the district court ultimately determined that the need for confinement outweighed the public policy favoring probation because Strom "failed to comply with virtually . . . all aspects of his probationary requirements." The district court did not abuse its discretion in making this determination.

Strom further argues that the district court could have imposed alternatives to executing his prison sentence, such as ordering workhouse time. While other options may have been available, a district court is not required to provide alternatives before revoking probation. *See State v. Osborne*, 732 N.W.2d 249, 255-56 (Minn. 2007) (concluding that the district court did not abuse its discretion by revoking defendant's probation without giving defendant a chance to seek additional probationary resources).

Because the record supports the district court's factual findings, and because the district court made the findings required by *Austin* and *Modtland* to revoke probation, we

conclude that the district court did not abuse its discretion by revoking Strom's probation and executing his sentence.

Affirmed.