

*This opinion is nonprecedential except as provided by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
A22-1147**

State of Minnesota,
Respondent,

vs.

Raul Segundo Benitez-Rivero,
Appellant.

**Filed April 10, 2023
Affirmed
Ross, Judge**

Freeborn County District Court
File No. 24-CR-10-335

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

David Walker, Freeborn County Attorney, Albert Lea, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Gaïtas, Judge; and Wheelock,
Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Probationer Raul Benitez-Rivero left Minnesota for about eight years after the district court authorized him to leave the state for only one week. The district court found that Benitez-Rivero violated his probation. It therefore revoked his probation and executed

his 86-month sentence for his underlying controlled-substance conviction. Benitez-Rivero argues on appeal from that decision that the district court erroneously revoked his probation when it found that he violated a condition never imposed and found that the need for his confinement outweighed the policies favoring probation. Because Benitez-Rivero's unauthorized remaining absent from the state for a period longer than he was permitted violated the term of his probation requiring him not to leave without permission and because the district court did not abuse its discretion in its weighing of confinement against continued probation, we affirm.

FACTS

The state charged appellant Raul Benitez-Rivero in February 2010 with first-degree controlled-substance sale for selling cocaine. Benitez-Rivero pleaded guilty, and he and the state jointly recommended probation, a dispositional departure. The district court sentenced Benitez-Rivero to 86 months in prison in September 2010, staying execution of the sentence under the plea-agreement terms and ordering probation for 6 to 30 years. The conditions of his probation required Benitez-Rivero to remain law-abiding, abstain from using drugs or alcohol, obtain permission before leaving the state, report to his probation officer as directed, and complete a drug-treatment program.

Benitez-Rivero's probation officer filed two probation-violation reports in September and December 2010, asserting that Benitez-Rivero failed to abstain from drugs, to enter a treatment program, and to be truthful with his probation officer. After hearings on each violation, the district court continued Benitez-Rivero on probation.

In May 2014, a district judge permitted Benitez-Rivero to leave Minnesota for one week. In November 2014, Benitez-Rivero's probation officer filed another probation-violation report, alleging that Benitez-Rivero failed to remain law-abiding and failed to report to her as directed between May and August 2014. She recommended that the district court revoke his probation. The district court issued a warrant for Benitez-Rivero's arrest. Benitez-Rivero remained a fugitive with no contact with his probation officer until 2022.

Law enforcement apprehended Benitez-Rivero in California in late March 2022 and returned him to Minnesota. His probation officer amended the 2014 probation report to reflect his absence from Minnesota without permission, again asking the district court to revoke probation. The district court conducted a probation-violation hearing in May 2022. Benitez-Rivero admitted that he had been thrice convicted of crimes, a violation of his probation requirement that he remain law-abiding. And he admitted that he failed to report to his probation officer between at least May and August 2014 as alleged. He also admitted that he remained absent from Minnesota longer than he had been permitted.

The district court found that Benitez-Rivero violated the terms of his probation as alleged in the probation-violation report and its addendum, and it found that all violations were intentional or inexcusable. It found that the need for his confinement outweighed the policies favoring probation, and it revoked his probation, executing his 86-month prison sentence.

Benitez-Rivero appeals.

DECISION

Benitez-Rivero argues on appeal that the district court erroneously revoked his probation. He maintains that the district court revoked his probation for violating a condition that was not imposed by the district court. He also argues that the district court erred by finding that the need for confinement outweighed the policies favoring his probation. Neither argument persuades us to reverse.

I

Benitez-Rivero argues that, because returning to the state tardy after having been permitted to leave was not a condition imposed by the district court, the district court had no authority to revoke his probation based on his failure to return. We reject the argument as an overly constrained reading of the condition. One of the necessary elements before revoking probation is a finding that the alleged misconduct violated a probationary condition. *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). This includes a finding that the allegedly violated condition is one that was actually imposed. *State v. Ornelas*, 675 N.W.2d 74, 79 (Minn. 2004). The relevant written condition here was the district court's requirement that Benitez-Rivero "obtain permission from [his probation officer] before leaving the State." Benitez-Rivero would have us treat his leaving the state for eight years as not violating this provision because he did not actually *leave* without permission, he instead *remained absent* without permission. Clever, but unavailing.

The prohibition against Benitez-Rivero's leaving the state before obtaining permission is meaningless if it also does not prohibit his remaining intentionally absent from the state without permission. Despite including the word "before," the prohibition is

not primarily temporal, but substantive. Benitez-Rivero did not leave after receiving generalized permission to depart; he left after receiving temporally quantified permission—permission he flouted for eight years. The district court found that he “did leave -- well, [he] didn’t leave the state without permission but [he] didn’t return in the time frame that was provided to [him]. Therefore, [he] didn’t have the appropriate permission to be outside the state of Minnesota.” This is exactly so. Because Benitez-Rivero’s probation precluded him from being absent from Minnesota without permission, the district court did not err by finding a violation.

II

Benitez-Rivero contends that the district court erroneously evaluated another *Austin* factor—the determination that the need for confinement must outweigh the policies favoring probation for probation to be revoked. *See Austin*, 295 N.W.2d at 250. We review the district court’s *Austin* findings for a clear abuse of discretion, *id.* at 249–50, and our review here leads us to affirm.

Benitez-Rivero argues that the policy reasons favoring his continued probation outweigh those favoring his confinement. We reiterate that imprisonment generally should not be imposed without a finding either that “confinement is necessary to protect the public from further criminal activity”; that the offender needs correctional treatment most effectively provided in confinement; or that “it would unduly depreciate the seriousness of the violation” not to revoke probation. *State v. Modtland*, 695 N.W.2d 602, 607 (Minn. 2005) (quoting *Austin*, 295 N.W.2d at 251). District courts must convey the reasons for revocation and the evidence relied on in making the determination. *Id.* at 608.

Benitez-Rivero suggests that his failure to maintain contact was minor because the court found a violation only between May and August 2014. But he also admits that his violations were serious, requesting a lesser sanction because of an alleged language barrier and his alleged good conduct in the eight years he was out of contact. He claims that a language barrier between him and his probation officer justified his failure to remain in contact. Having agreed to the probationary condition to report as directed to his probation officer, Benitez-Rivero accepted the obligation to do so without regard to any difficulties the alleged language barrier presented.

Benitez-Rivero also highlights his alleged sobriety and law-abiding conduct in the years he was absent from Minnesota, insisting that this demonstrates that he should have remained on probation. The district court reasonably recognized, however, that it could hardly evaluate Benitez-Rivero's supposed progress because of his lack of contact with his probation officer. The district court observed that Benitez-Rivero had been subject to two prior probation-violation proceedings and that some of the additional conduct underlying the state's contention that he failed to remain law-abiding included offenses that involved victims. Although Benitez-Rivero alleges mitigating factors—the alleged language barrier and his alleged sobriety—the district court's findings, which Benitez-Rivero does not contest, are well supported by the record. The district court's analysis went beyond general, nonspecific reasons for revocation, and reasonably found that it would unduly depreciate the seriousness of the violations if it did not revoke Benitez-Rivero's probation. It therefore did not abuse its discretion.

Affirmed.