

*This opinion is nonprecedential except as provided by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
A22-1222**

State of Minnesota,
Respondent,

vs.

Ivan Ray Vaughan,
Appellant.

**Filed March 20, 2023
Affirmed
Connolly, Judge**

Douglas County District Court
File No. 21-CR-18-1414

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

Chad M. Larson, Douglas County Attorney, Alexandria, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Max Brady Kittel, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Slieter,
Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

On appeal from the district court's order revoking appellant's probation and
executing his sentence for first-degree controlled-substance crime, appellant argues that
the district court abused its discretion by finding that the need for confinement outweighed

the policies favoring continued probation. Because we discern no abuse of discretion, we affirm.

FACTS

In March 2021, appellant Ivan Vaughan pleaded guilty to first-degree possession of a controlled substance. Consistent with the parties' plea agreement, the district court sentenced Vaughan to a downward dispositional departure of 115 months in prison. The district court stayed execution of a 115-month prison sentence and placed Vaughan on probation.

In June 2021, Vaughan was charged with domestic assault. A probation violation report was subsequently filed alleging that Vaughan violated the terms of his probation by failing to remain law abiding. The report also alleged that Vaughan failed to complete a chemical-use assessment and follow the recommendations. Addenda to the violation report were later filed, the first alleging that Vaughan failed to remain law abiding because he was charged with fifth-degree possession of a controlled substance, and the second alleging that Vaughan admitted to using methamphetamine. Although the charges against Vaughan were still "pending" at the time of the contested revocation hearing, the district court found that Vaughan violated the conditions of his probation by using methamphetamine. The district court then reinstated Vaughan on his original terms of probation and ordered him to serve 98 days in jail as an intermediate consequence with credit for time served.

Shortly after his reinstatement on probation, another probation violation report was filed. It alleged that Vaughan violated the terms of his probation by failing to (1) maintain contact with probation; (2) tell probation that he was charged with a new crime; and (3)

submit to random testing. Addenda to the violation report were later filed alleging that Vaughan tested positive for methamphetamine and failed to comply with testing as directed. The district court found that Vaughan violated the terms of his probation by failing to (1) maintain contact with probation as directed, and (2) submit to random testing. The district court also found that the violations were “intentional and inexcusable.” The district court, therefore, revoked Vaughan’s probation and executed his 115-month sentence. This appeal follows.

DECISION

Vaughan challenges the district court’s decision to revoke his probation and execute his prison sentence. “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 we review de novo whether the district court made the required findings to revoke probation. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

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.*

When analyzing the third *Austin* 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.* To make a finding on the third *Austin* factor, a district court weighs three “*Modtland* subfactors”: whether (1) “confinement is necessary to protect the public from further criminal activity by the offender,” (2) “the offender is in need of correctional treatment which can most effectively be provided if [the offender] is confined,” or (3) “it would unduly depreciate the seriousness of the violation if probation were not revoked.” *Modtland*, 695 N.W.2d at 607 (quotation omitted). Only one *Modtland* subfactor is necessary to support revocation. *See Goldman v. Greenwood*, 748 N.W.2d 279, 283 (Minn. 2008) (stating that courts “normally interpret the conjunction ‘or’ as disjunctive rather than conjunctive”).

District courts “should not assume that they have satisfied *Austin* by reciting the three factors and offering general, non-specific reasons for revocation.” *Modtland*, 695 N.W.2d at 608. Moreover, 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). And 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. Therefore, district courts must make “thorough, fact-specific records” and “seek to convey their substantive reasons for revocation and the evidence relied upon.” *Id.* at 608.

Vaughan challenges only the third *Austin* factor, arguing that the “district court’s revocation of [his] probation must be reversed because the court’s finding that the need for confinement outweighed the policies favoring probation went against logic and was not supported by the facts in the record.” But in addressing this factor, the district court made

findings related to each of the three *Modtland* subfactors. Concerning the first *Modtland* subfactor, the district court found that “confinement is necessary to protect the public from further criminal activity” because, while he was on probation, there were “admissions” that Vaughan used methamphetamine and “[t]here are other offenses charged.”

Vaughan argues that, because the district court said new charges were “just pending” at this point, they do not warrant a revocation of his probation. But an offender need not commit a new crime for a district court to properly determine that confinement is necessary to protect the public. *See, e.g., State v. Rottelo*, 798 N.W.2d 92, 95 (Minn. App. 2011) (addressing and rejecting the “often-heard argument that [appellant] ‘committed no new crimes’ while he was on probation”), *rev. denied* (Minn. July 19, 2011). Here, the record reflects that Vaughan was charged with several offenses while he was on probation. Although the charges were not resolved at the time of the contested revocation hearing, the fact that Vaughan was charged with multiple offenses while on probation demonstrates Vaughan’s continued anti-social behavior. The pending charges against Vaughan, when considered in conjunction with Vaughan’s continued methamphetamine use, support the district court’s determination that Vaughan’s confinement is necessary to protect the public from further criminal activity.

With respect to the second *Modtland* subfactor, the district court found:

You are not particularly amenable to probation, as evidenced by your failure to maintain contact with your agent. You certainly need some kind of treatment, which can most effectively be provided in prison. I mean, you are just not able to get into treatment outside of a prison setting based on your physical condition.

Vaughan argues that the district court's finding on this subfactor is "not supported by the facts in the record" because "[w]hile the record is clear" that he "needs medical and chemical dependency treatment, there is nothing in the record to support that [his] medical dependency needs will be better addressed in prison as opposed to the community." To support his position, Vaughan refers to his "litany of health issues," including his major back problems. He claims that these "issues will be exacerbated in a prison setting, whereas in the community, his insurance was adjusted, and he was working with his doctors." Vaughan also asserts that he had his back fusion surgery scheduled in the community, and that "it seems unlikely that following a major back fusion surgery that prison will be better equipped to rehabilitate [him] than his community doctors." And Vaughan asserts that his success at Teen Challenge, before his back injury, demonstrates that his chemical-dependency-treatment needs would be better met in the community.

We are not persuaded. Vaughan's probation agent reported that he has "continued to see avoidance when it came to discussing treatment [with Vaughan] and that [Vaughan's] medical situation dominates his focus in attempt to avoid treatment." The agent also noted that Vaughan's "back issue has existed for many years and continues to persist as a priority to him. Yet, no surgical action has been taken to address it." As the agent told the district court, Vaughan has "been going on with this surgery for a long time, but I have seen nothing of legitimate follow through of this process." The agent then explained that

unfortunately, that leads to when there is no follow through there, or a lack of follow through of getting this surgery scheduled only when it comes up in court and only when I'm

looking to try and get him into treatment to assist his chemical dependency needs, as well as some of his anger issues, that's when this surgery comes up.

And the agent stated: "I am not really understanding how [Vaughan] can't go into a treatment facility because his back pain is so bad, and yet, he can [work, and] drive all the way from Alexandria down to St. James." The agent's report and testimony support the district court's finding that Vaughan is in need of correctional treatment that can most effectively be provided if he is confined.

Finally, with respect to the third *Modtland* subfactor, the district court found that it would unduly depreciate the seriousness of the violation if probation were not revoked because Vaughan received a departure and he has "had multiple chances." Vaughan challenges this determination, arguing that, because his violations were "minor," it would not unduly depreciate their seriousness if probation were not revoked. But Vaughan failed to submit to random testing and admitted to using methamphetamine, which was the controlled substance he possessed that led to the charged offense in this case. In light of the offense of which he was convicted, Vaughan's violations were not "minor." Although the district court's findings relating to the *Modtland* subfactors are relatively sparse, they sufficiently convey the court's substantive reasons for revocation and the evidence upon which it relied. Accordingly, Vaughan cannot show that the district court abused its discretion by revoking his probation and executing his sentence.

Affirmed.