

*This opinion is nonprecedential except as provided by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
A22-1777**

State of Minnesota,
Respondent,

vs.

Kerion Amare Briggs,
Appellant.

**Filed July 3, 2023
Affirmed
Worke, Judge**

Chisago County District Court
File No. 13-CR-22-278

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

Janet Reiter, Chisago County Attorney, Aimee S. Cupelli, Assistant County Attorney,
Center City, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rebecca Ireland, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Bratvold,
Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges the revocation of his probation, arguing that the district court made insufficient findings to revoke probation and abused its discretion by determining that the need for confinement outweighed the policies favoring probation. We affirm.

FACTS

In November 2019, appellant Kerion Amare Briggs pleaded guilty to aiding and abetting attempted second-degree murder. At sentencing in May 2022, the district court found “that with the right type of treatment and the right type of supervision and structure, . . . there is a chance that [Briggs] will be successful.” The district court sentenced Briggs to 131 months in prison, stayed execution of the sentence, and placed him on probation for 20 years. Included in his conditions of probation, Briggs was required to “comply with the treatment recommendations . . . to include residential treatment at Transformation House.” The district court ordered Briggs to “remain[] at Transformation House for a minimum of six months,” with an added condition that Briggs was not to be discharged from the program until a review hearing could be held to consider any progress reports related to Briggs’s treatment.

In July 2022, respondent State of Minnesota alleged that Briggs violated probation by absconding from treatment. Briggs admitted the violation at a September 2022 hearing. The district court determined that Briggs “provided the court with sufficient facts to support that admission, which does provide a basis for the court to find . . . that [Briggs] did willfully violate the term of [his] probation.” The district court revoked Briggs’s probation and executed his 131-month sentence. This appeal followed.¹

¹ On appeal, the state did not file a brief. *See* Minn. R. Civ. App. P. 142.03 (providing if respondent fails to file a brief, the case shall be determined on the merits).

DECISION

Briggs challenges the district court's order revoking probation and executing his sentence, arguing that the need for confinement did not outweigh the policies favoring continued probation. District courts have "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 sufficient findings to revoke probation. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

Minnesota Statutes section 609.135, subd. 1(a)(2) (2022), provides that "[e]xcept when a sentence of life imprisonment is required by law, or when a mandatory minimum sentence is required," a district court "may stay imposition or execution of sentence and . . . may place the defendant on probation." If the district court determines that a defendant "has violated any of the conditions of probation or intermediate sanction, or has otherwise been guilty of misconduct which warrants the imposing or execution of sentence, the court may without notice revoke the stay and direct that the defendant be taken into immediate custody." Minn. Stat. § 609.14, subd. 1(a) (2022).

If the district court finds there are grounds to revoke probation and if a sentence was previously imposed and its execution stayed, the court may "continue such stay and place the defendant on probation or order intermediate sanctions in accordance with the provisions of [Minn. Stat. § 609.135 (2022)], or order execution of the sentence previously imposed." *Id.*, subd. 3(2) (2022); *see also* Minn. R. Crim. P. 27.04, subd. 3(2)(b) (detailing

the process for revocation proceedings and providing that if the probationer admits a probation violation, the court may execute the offender's sentence).

Before revoking probation, the district court must consider and make specific findings on the three *Austin* factors. 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.* 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. The district court's decision to revoke an offender's probation "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). The district court must be mindful that the purpose of probation is rehabilitation and that revocation should be a last resort. *Modtland*, 695 N.W.2d at 606. Therefore, when revoking probation, 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.

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." *Austin*, 295 N.W.2d at 250. To do that, the third *Austin* factor suggests the district court weigh the 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).

Given these principles and the record before us, we reject Briggs’s arguments. Briggs violated probation by absconding from treatment. Relying on the first *Modtland* subfactor, the district court found Briggs’s conduct to “establish[] that there . . . isn’t anything” other than revoking probation and executing Briggs’s sentence “that will keep [him] safe, keep the public safe, and make [Briggs] more amenable to probation.” *Austin*, 295 N.W.2d at 251 (affirming probation revocation when offender had “been offered treatment but ha[d] failed to take advantage of the opportunity”).

Additionally, Briggs pleaded guilty to aiding and abetting attempted second-degree murder—a serious felony—and his presumptive sentence was 131 months in prison. The district court also properly noted that Briggs received a downward dispositional departure to probation. *See State v. Fleming*, 869 N.W.2d 319, 331 (Minn. App. 2015) (stating that district court properly considered “its grant of a downward dispositional departure when deciding whether to revoke probation”), *aff’d*, 883 N.W.2d 790 (Minn. 2016).

These findings are sufficiently fact specific. Based on them, the district court permissibly found that the first *Modtland* subfactor supported revocation. The district court did not abuse its discretion by revoking Briggs’s probation after concluding that the need for confinement outweighed the policies favoring probation.

Affirmed.