

*This opinion is nonprecedential except as provided by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
A23-0801**

State of Minnesota,
Respondent,

vs.

Rodney Owen Scofield,
Appellant.

**Filed March 11, 2024
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge**

Chisago County District Court
File No. 13-K8-01-000301

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

Janet Reiter, Chisago County Attorney, Jillian M. Skaar, Assistant County Attorney,
Center City, Minnesota (for respondent)

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Considered and decided by Bratvold, Presiding Judge; Smith, Tracy M., Judge; and
Cleary, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal from an order revoking probation and executing a 54-month stayed sentence, appellant Rodney Owen Scofield argues that (1) the district court failed to make the required findings; (2) the record does not support revoking probation and executing his stayed sentence; (3) the district court violated his due-process rights by relying on evidence outside the record and on unsworn statements made by the probation officer; and (4) the district court erred by imposing a second, consecutive 21-month sentence because that sentence had already been imposed, executed, and satisfied. Because the district court did not abuse its discretion by revoking probation, we affirm the execution of Scofield's stayed 54-month sentence. But, because the 21-month sentence was already executed and served, we reverse that sentence and remand with instructions to vacate it.

FACTS

In 2001, respondent State of Minnesota charged Scofield with four counts of criminal sexual conduct, including two counts of first-degree criminal sexual conduct and two counts of second-degree criminal sexual conduct. The state alleged that, between 1995 and 2000, Scofield, a youth leader at a church, had engaged in sexual contact with two minors who participated in choir at the church.

Scofield entered into a plea agreement under which he pleaded guilty to the two counts of second-degree criminal sexual conduct—counts three and four—in exchange for dismissal of the first-degree criminal-sexual-conduct charges. In January 2002, the district

court sentenced Scofield to an executed term of 21 months in prison on count three and to a stayed term of 54 months in prison on count four, placing him on probation for 25 years.

Scofield's conditions of probation prohibited him from having "contact with minor males directly or indirectly on an unsupervised basis" and from "purchas[ing] or possess[ing] sexually explicit pictures, magazines, or videotapes." In 2004, the conditions were amended to prohibit Scofield from having "any contact directly or indirectly with minors." In 2012, that condition was amended to allow Scofield to have contact with his newborn son.

In October 2022, the probation department filed a probation-violation report alleging that Scofield had violated the conditions of his probation by having contact with minors other than his biological son and by possessing sexually explicit material. At the probation-revocation hearing, Scofield admitted that he violated the conditions of his probation. The state recommended that Scofield's stayed sentence be executed. Scofield argued for continued probation. The district court decided to revoke probation and executed Scofield's stayed 54-month sentence on count four. The district court also imposed a consecutive sentence of 21 months in prison on count three.

Scofield appeals.

DECISION

Scofield challenges the revocation of probation and execution of his stayed sentence on count four. Additionally, Scofield challenges the imposition of a sentence on count three. As explained below, we conclude that the district court did not abuse its discretion

in revoking probation on count four. But we agree with Scofield (and the state) that the district court erred by imposing a sentence on count three.

I. The district court did not abuse its discretion by revoking probation and executing Scofield’s stayed 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). “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

Before a district court revokes probation, the court must find that (1) a designated specific condition or conditions were violated, (2) the violation was intentional or inexcusable, and (3) the need for confinement outweighs the policies favoring probation. *Austin*, 295 N.W.2d at 250. When making the required *Austin* findings, the court “must seek to convey [its] substantive reasons for revocation and the evidence relied upon.” *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005). Whether the district court made the required *Austin* findings is a question of law, which appellate courts review de novo. *Id.* at 605.¹

¹ The state asserts that the de novo standard of review does not apply here “because the district court did make each specific *Austin* finding on the record.” But Scofield argues that “the district court failed to make the findings required by *Austin*,” which, again, is subject to de novo review.

A. The district court made the required *Austin* findings.

Scofield does not dispute that the district court made the first *Austin* finding—that a designated specific condition or conditions were violated—but argues that the district court failed to make the second and third *Austin* findings.

Scofield first asserts that “the district court . . . did not find that the violations were intentional or inexcusable.” As the state points out, however, after Scofield admitted to the alleged violations, the district court explicitly found that the violations were intentional and inexcusable.

THE COURT: And as part of the terms of your probation[,] . . . you were not to possess any sexual explicit material. Also true?

THE DEFENDANT: Yes.

THE COURT: Is it true that on September 6, 2022, probation had received a forensic report from your, looks like your computer, your iCloud account, that you had possessed and accessed sexually explicit images/videos from the Internet?

THE DEFENDANT: Yes.

THE COURT: And on September 22, 2022, you admitted to probation that you possessed and accessed that information without probation’s approval or knowledge?

THE DEFENDANT: Yes.

THE COURT: Okay. And it also indicates that . . . you failed to not have contact with any minor children other than your biological son. It indicates that a forensic report showed images of minor children at your residence on a trampoline. And that on September 22, 2022, you admitted to probation . . . that you had taken pictures of the children on the trampoline and you knew that that was a violation of your probation, correct?

THE DEFENDANT: Yes.

THE COURT: I do find intentional violation without excuse.

Scofield next contends that “the district court did not find that the need for confinement outweighs the policies favoring probation.” The third *Austin* finding requires the district court to “balance the probationer’s interest in freedom and the state’s interest in insuring his rehabilitation and the public safety.” *Modtland*, 695 N.W.2d at 606-07 (quotation omitted). “The purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed.” *Austin*, 295 N.W.2d at 250.

The third *Austin* factor may be satisfied by a finding of any of three subfactors: “(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.” *Modtland*, 695 N.W.2d at 607 (quotation omitted).

The district court did not explicitly state that the need for confinement outweighed the policies favoring probation. Nonetheless, the district court made that finding because it found that the first and third *Modtland* subfactors were satisfied. Specifically, the district court stated:

So you having admitted these violations, I do believe the *Austin* factors are met. I do believe that confinement is necessary to protect the public. I don’t believe that you just have a trampoline in your yard just for fun. You’re enticing to have children come over there and even though you’re not standing there with them you’re watching them from far away just like you’re watching these videos of children being molested. And to say that you just forgot that they were on there when there’s thousands of pictures on here of children being taken advantage of. Of the names of victims that we will

never know, and your own child you victimized, your own child in a position of trust.

I do find that prison is necessary to protect the public. These are not little violations. I think it would unduly appreciate [sic] the seriousness of these violations to not impose a prison sentence.

The record demonstrates that the district court made all the required *Austin* findings.

B. The record supports revoking probation and executing Scofield's stayed sentence.

Scofield contends that the district court clearly erred and abused its discretion by revoking probation and executing his stayed sentence. He makes two arguments.

First, Scofield argues that “the district court made several erroneous, unsupported findings about [him] with no basis in the record.” Specifically, Scofield challenges the district court’s statements regarding his possession of images. He first points to the district court’s statement that he was “watching . . . videos of children being molested.” In the probation-violation report, the probation department discussed a forensic report that it received in September 2022 regarding the contents of Scofield’s online cloud storage account. The forensic report, according to the probation-violation report, showed that Scofield had possessed sexually explicit images, including a photo of child pornography and videos with titles suggesting that Scofield searched for images relating to the sexual exploitation of children. Scofield admitted to the probation department that he had possessed and accessed sexually explicit images from the internet. The record supports the district court’s statement that Scofield was “watching . . . videos of children being molested.”

Scofield also points to the district court’s comment about his online cloud storage account where the district court stated that “there’s thousands of pictures on here of children being taken advantage of.” According to the probation-violation report, the forensic report showed that Scofield’s online cloud storage account contained “thousands of images” of his son in the bathtub. During the probation-violation hearing, a probation officer explained that the “thousands [of] images” of Scofield’s son included “[v]ideos that could be interpreted as multiple images.” The district court reviewed the forensic report during the hearing.² After the district court viewed several images of Scofield’s son in the forensic report, the district court described some of the images as “disturbing.” The forensic report also showed that Scofield had possessed a photo of child pornography and images of four “boys” appearing partially nude. The record supports the district court’s description of the images in Scofield’s online cloud storage account as “thousands of pictures . . . of children being taken advantage of.”

Second, Scofield appears to argue that the violations did not establish that the need for confinement outweighed the policies favoring probation. He points out that, while he was on probation, he maintained stable housing and employment, earned a master’s degree, and volunteered in the community. He also asserts that he had been on probation for 20 years at the time of the violations and that he had not looked at pornography online for 10 to 15 years. But an appellate court may not reweigh evidence when reviewing a district court’s factual determinations. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-

² As further discussed below, the forensic report was not made part of the record.

22 (Minn. 2021). We discern no abuse of discretion in the district court’s determination here.

The record supports the district court’s revocation of probation and execution of Scofield’s stayed sentence.

C. The district court did not violate Scofield’s due-process rights.

Scofield argues that the district court violated his due-process rights by relying on the forensic report and on unsworn statements made by the probation officer during the probation-revocation hearing. The United States and Minnesota Constitutions prohibit the state from depriving a criminal defendant of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7.

Minnesota Rule of Criminal Procedure 27.04 sets forth the procedures to be followed to ensure that a defendant enjoys his due-process rights under *Morrissey v. Brewer*, 408 U.S. 471 (1972), before probation is revoked. Generally, a revocation hearing must be held to determine whether there is clear and convincing evidence that the defendant violated a condition of probation and, if so, whether the circumstances warrant revocation. Minn. R. Crim. P. 27.04, subds. 2(1)(c)(b), 3(1). But, when the defendant waives his right to a “contested hearing,” he waives his right to have adequate evidence of the violation presented. *State v. Xiong*, 638 N.W.2d 499, 503 (Minn. App. 2002), *rev. denied* (Minn. Apr. 16, 2002). The defendant’s waiver “serves as a stipulation to the state’s allegations in the violation report” and “the district court may base its finding on the violation report and the [defendant’s] waiver.” *Id.*

Scofield waived his right to a contested hearing. He therefore waived the requirement that the state present clear and convincing evidence of the allegations in the probation-violation report. But Scofield argues that the district court should not have relied on the forensic report and on unsworn statements made by the probation officer to make findings of fact relating to his arguments for continued probation.

At the probation-revocation hearing, Scofield, after admitting to the probation violations, disputed three of the allegations in the probation-violation report. First, he claimed that the images of his son in the bathtub were not sexual in nature. The district court viewed several images of Scofield's son in the forensic report and stated that it disagreed with Scofield's claim. The probation-violation report described the images of Scofield's son in the forensic report that the district court viewed.

Second, Scofield denied that a video camera in his son's bedroom showed the changing area in the room. In the probation-violation report, the probation department alleged that Scofield had a video camera in his son's bedroom with "a panoramic view of the . . . room," including the "changing area." The district court asked the probation officer about the camera's view, and the probation officer stated that the camera showed "a panoramic view of the room." The district court concluded that the camera would show Scofield's son changing in his room.

Third, Scofield contended that he did not save the sexually explicit material to his devices. The probation-violation report set forth the allegation that, when the probation department asked Scofield if there was anything on his devices that might jeopardize his

probation, Scofield denied any wrongdoing or improper use of the devices. The probation officer repeated this allegation to the district court.

Scofield's argument that his due-process rights were violated is unconvincing. The probation-violation report was part of the record. The forensic report that the district court reviewed was described in the probation-violation report, and the statements made by the probation officer at the hearing repeated information that was also contained in the probation-violation report. In these circumstances, we see no violation of Scofield's due process rights in the district court's review of the forensic report and its consideration of the unsworn statements made by the probation officer during the probation-revocation hearing.

II. The district court erred by imposing a sentence for an offense that had been previously sentenced.

Scofield and the state agree that the district court erred by imposing a consecutive sentence of 21 months in prison on count three because he had already served that previously imposed and executed sentence. The double-jeopardy clauses of the United States and Minnesota Constitutions protect criminal defendants from multiple punishments for the same offense. U.S. Const. amend. V; Minn. Const. art. I, § 7. The record demonstrates that, in January 2002, the district court sentenced Scofield to an executed term of 21 months in prison on count three. The district court therefore erred by imposing another sentence on count three. We reverse the 21-month sentence on count three and remand to the district court to vacate the sentence.

Affirmed in part, reversed in part, and remanded.