

*This opinion is nonprecedential except as provided by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
A23-1715**

In the Matter of the Welfare of: G. A. B., Child.

**Filed July 8, 2024
Affirmed
Smith, Tracy M., Judge**

Clay County District Court
File Nos. 14-JV-20-1851, 14-CR-23-2696

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant G.A.B.)

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

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Considered and decided by Smith, Tracy M., Presiding Judge; Bjorkman, Judge;
and Frisch, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal from the district court's revocation of extended jurisdiction juvenile (EJJ) probation and execution of a stayed 144-month adult sentence, appellant argues that a remand is necessary because the district court failed to make the required findings. Alternatively, appellant argues that the district court abused its discretion by revoking EJJ probation because the policies favoring retaining appellant on EJJ probation outweigh the

need for confinement and therefore the order revoking EJJ probation must be reversed. We affirm.

FACTS

In March 2020, appellant G.A.B. engaged in sexual intercourse, involving penetration, with a 12-year-old girl whom he had met online through social media. At the time, G.A.B. was 16 years old. Respondent State of Minnesota filed a juvenile-delinquency petition charging G.A.B. with one count of first-degree criminal sexual conduct and two counts of third-degree criminal sexual conduct.¹

In October 2020, G.A.B. pleaded guilty to first-degree criminal sexual conduct. G.A.B. received a stayed adult prison sentence of 144 months and was placed on EJJ probation until his 21st birthday. He was ordered to complete the Pathways program among other conditions of probation.

In January 2021, G.A.B. completed the Pathways program, and two weeks later, the district court released G.A.B. to the care and custody of his mother. The district court ordered G.A.B. to “follow all aftercare recommendations[,] . . . follow all recommendations of [his] diagnostic assessment, . . . attend and participate in trauma therapy with Lutheran Social Services, . . . attend and participate in intensive outpatient treatment with Drake Counseling, . . . [and] attend school with no unexcused absences or tardies.” These conditions were ordered in addition to the previous conditions ordered.

¹ See Minn. Stat. §§ 609.342, subd. 1(a) (first-degree criminal sexual conduct), .344, subd. 1(b) (third-degree criminal sexual conduct) (2020).

In March 2021, a probation-violation report was filed alleging that G.A.B. failed to attend and participate in trauma therapy with Lutheran Social Services, failed to attend and participate in treatment with Drake Counseling, and failed to attend school with no unexcused absences or tardies.

In April 2021, probation filed an addendum to the March 2021 probation-violation report, alleging an additional violation for failure to obey all probation rules because, as probation alleged, G.A.B. failed to contact his probation agent, he was not in school, and his whereabouts were unknown.

On July 2, 2021, probation filed another addendum alleging an additional violation for failure to remain law abiding. It was alleged that G.A.B. had been cited with four misdemeanors: (1) fifth-degree assault—fear of bodily harm or death; (2) fleeing a peace officer by means other than a motor vehicle; (3) possession of a facsimile firearm; and (4) possession of drug paraphernalia—use or possession prohibited.

At the probation-violation hearing on July 6, 2021, G.A.B. admitted all five probation violations. The district court found G.A.B. in violation, but deferred disposition for 60 days and released G.A.B. to the custody of his mother.

In August 2021, probation filed a third addendum to the March 2021 probation-violation report, alleging an additional violation for “failure to remain law abiding and of good behavior and obey all probationary and parental rules.” The report alleged that G.A.B. was cited for tampering with motor vehicles.

At a hearing in September 2021, the state requested that the district court execute G.A.B.’s adult prison sentence. G.A.B.’s attorney requested that the district court send

G.A.B. to the juvenile residential correctional facility at the Minnesota Correctional Facility in Red Wing. The district court noted that, since the previous hearing, G.A.B. had not reengaged in services and, having found him in violation of probation, ordered that he be placed at Red Wing.

In July 2022, G.A.B. successfully completed his placement at Red Wing. At a review hearing, G.A.B.'s probation officer noted that "[G.A.B.] has overall done excellent in [the] program and ha[d] really made quite a transformation at Red Wing." G.A.B. was ordered to, among other conditions, complete the Community Living Independent Programming and Skills (CLIPS) program at the West Central Regional Juvenile Center.

In January 2023, a probation-violation report was filed alleging a new probation violation for failure to successfully complete the CLIPS program. The report alleged that G.A.B. submitted a urinalysis (UA) that was positive for methamphetamine and that he was "unsuccessfully discharged" from the CLIPS program after he brought in tobacco vape devices, potentially with the intent to bring in methamphetamine to use through the devices. The report alleged that G.A.B. had been moved from CLIPS to secure detention "on several occasions due to ongoing chemical use (methamphetamine) and behavioral issues when provided the opportunity to be in the community with work status" and that his pattern of behavior "demonstrate[ed] an inability to make positive choices and ongoing substance use when provided the opportunity to be in a lesser-restrictive setting." Probation recommended revoking G.A.B.'s EJJ probation and executing his adult sentence.

A letter from the CLIPS program director noted that G.A.B. "started off the program relatively strong" and that he "should be commended for the positive changes he has been

able to make over the last several years,” but that he was “in need of a greater level of structure and support than the CLIPS program [could] afford him.”

A probation-violation hearing was held in February 2023 at which G.A.B. admitted to violating probation by failing to complete the CLIPS program because he brought in vape devices and failed drug tests. The state argued that all opportunities in the juvenile system had been exhausted and requested that the district court revoke G.A.B.’s EJJ probation and execute his adult sentence. Probation agreed with the state’s recommendation. G.A.B.’s attorney requested that the district court order G.A.B. to complete a chemical-dependency treatment program rather than revoke EJJ. The district court found G.A.B. in violation but deferred disposition.

At the disposition hearing, the district court retained G.A.B. on EJJ probation under the same conditions and ordered that he complete inpatient chemical-dependency treatment. G.A.B. successfully completed the treatment program, and, at G.A.B.’s request, the district court ordered that he transition back to, and complete, the CLIPS program.

In June 2023, a probation-violation report was filed alleging a violation for failure to complete the CLIPS program. It was alleged that G.A.B. failed to report to work and did not return to the CLIPS program and that his whereabouts were unknown. In July 2023, an addendum was filed alleging additional probation violations for chemical use and failure to remain law abiding, which were based on new criminal charges for possession of methamphetamine, unlawful display of license plates, and fleeing a peace officer in a motor vehicle. In the report, probation recommended that EJJ probation be revoked and that G.A.B.’s adult sentence be executed.

At a revocation hearing in August 2023, G.A.B. admitted to violating the conditions of probation by failing to successfully complete the CLIPS program, failing to remain law abiding, and failing to abstain from alcohol or controlled substances. G.A.B. specifically admitted that he pleaded guilty to possession of methamphetamine and unlawful display of license plates.

The state argued that EJJ probation should be revoked because any other consequence would depreciate the seriousness of the violations. G.A.B.'s attorney argued that EJJ probation should not be revoked and that he should be reinstated on probation and ordered to complete programming at Red Wing again.

After a lengthy discussion of G.A.B.'s history on EJJ probation, the district court revoked EJJ probation and executed G.A.B.'s 144-month adult sentence. It stated:

I am finding . . . that you have violated probation. That the violations are inexcusable and intentional. That to not revoke the EJJ and impose your adult sentence would unduly depreciate not only the seriousness of the violations but would also, potentially . . . fail to address public safety concerns in the fact that you have not been able to successfully transition out of these placements, and that you still continue to struggle with all of the issues that were there at the beginning when you were first sentenced.

The district court also found that probation is not appropriate and that the policies favoring probation would not be served by continuing G.A.B. on probation.

The district court's written order made the following findings:

7. The violations of probation are willful, inexcusable, and intentional.

8. The violations of failing to complete the CLIPS program as well as new law violations for possession/use of

controlled substances and unlawful display of license plates are serious in nature.

9. This is the 4th formal probation [violation] filed in this matter and there are no further available options in the juvenile system appropriate for the child. All appropriate options in the juvenile system have been exhausted.

[10]. Reinstatement on [EJJ] would unduly depreciate the violations and fail to address the public safety concerns. The need for confinement outweighs the policies favoring probation.

G.A.B. appeals.

DECISION

Before revoking EJJ probation and executing a previously stayed adult sentence, the district court must (1) identify the specific condition of probation that was 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. B.Y.*, 659 N.W.2d 763, 764, 768 (Minn. 2003) (quoting *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980)) (holding that “the *Austin* factors must be considered” in the EJJ probation revocation context); *see also* Minn. R. Juv. Delinq. P. 19.11, subd. 3(C)(1), (2).

Under the third *Austin* 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.” *Austin*, 295 N.W.2d at 250. To make a finding on the third *Austin* factor, the district court considers the three subfactors identified in *State v. Modtland*—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 he is confined; or” (3) “it would unduly depreciate the seriousness of the violation if probation were not revoked.” 695 N.W.2d 602, 607 (Minn. 2005) (quotation omitted). Only one of the *Modtland* subfactors 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”).

G.A.B. challenges the revocation of his EJJ probation and execution of his adult sentence on two grounds: (1) the district court failed to make sufficient findings on the three *Austin* factors and (2) the district court abused its discretion by revoking EJJ probation because the third *Austin* factor was not supported by the record. We address each argument in turn.

I. The district court made sufficient findings on the three *Austin* factors.

G.A.B. contends that the order revoking his EJJ probation must be reversed and the case remanded because his attorney did not argue the *Austin* factors and the district court merely recited the factors in its written order. Whether the district court made the required findings to revoke probation is a question of law, which appellate courts review de novo. *Modtland*, 695 N.W.2d at 605. In making its findings, the district court must “convey [its] substantive reasons for revocation and the evidence relied upon.” *Id.* at 608.

To support his argument, G.A.B. relies on a nonprecedential opinion, *State v. N.R.S.*, in which we reversed and remanded an EJJ revocation because “the parties did not present evidence or argument on the *Austin* factors, and . . . the district court did not consider [the] factors.” No. A09-2044, 2010 WL 3119446, at *2 (Minn. App. Aug. 10, 2010). As a nonprecedential opinion, *N.R.S.* is not binding authority. *See* Minn. R. Civ. App. P. 136.01,

subd. 1(c) (“Nonprecedential opinions . . . are not binding authority except as law of the case, res judicata or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority.”). And, were we to consider *N.R.S.* for its persuasive value, we are satisfied that the facts of the case at hand do not compel reversal.

At the hearing, G.A.B.’s attorney addressed the issue of whether the need for confinement outweighs the policies favoring probation by arguing that the options in the juvenile system were not exhausted and that retaining G.A.B. on EJJ probation at Red Wing would provide him a better transition into the community. Thus, contrary to G.A.B.’s contention on appeal, his attorney’s argument at the revocation hearing addressed the third *Austin* factor.²

Further, the district court’s order and the record demonstrate that the district court did not merely recite the factors but rather considered their application to G.A.B.’s case. Regarding the first *Austin* factor, the district court found that G.A.B. violated probation and identified the violations as (1) failure to complete the CLIPS program and (2) “new law violations for possession/use of controlled substances and unlawful display of license plates.” The record is clear that the district court went through the probation violations with G.A.B. and that G.A.B. admitted to the specific violations.

Regarding the second *Austin* factor, the district court found that “[t]he violations of probation [were] willful, inexcusable, and intentional.” The record demonstrates that G.A.B. absconded from the CLIPS program, he admitted that he used controlled substances

² At the hearing, neither party addressed the first or second *Austin* factors.

that were not prescribed to him, and he admitted that he pleaded guilty to both criminal offenses.

Regarding the third *Austin* factor, the district court found that the violations were “serious in nature,” that “there [were] no further available options in the juvenile system appropriate for [G.A.B.],” that “[r]einstatement on [EJJ] would unduly depreciate the violations and fail to address the public safety concerns,” and that “[t]he need for confinement outweighs the policies favoring probation.” These findings address all three *Modtland* subfactors. And, at the hearing, the district court explained its findings by stating that G.A.B. “ha[d] not been able to successfully transition out of these placements, and that [he] still continue[d] to struggle with all of the issues that were there at the beginning when [he was] first sentenced.”

We are satisfied that the district court addressed all three *Austin* factors and that it “convey[ed] [its] substantive reasons for revocation and the evidence relied upon.” *Modtland*, 695 N.W.2d at 608. We thus conclude that the district court’s findings on the *Austin* factors were sufficient.

II. The district court did not abuse its discretion by revoking EJJ probation.

G.A.B. also argues that the district court abused its discretion by revoking G.A.B.’s EJJ probation “because the policies favoring retention under EJJ supervision outweigh the need to confine G.A.B.” “The [district] court has broad discretion in determining if there is sufficient evidence to revoke probation.” *Austin*, 295 N.W.2d at 249. Without a clear abuse of that discretion, we will affirm a probation revocation order and disposition in a juvenile-delinquency case. *In re Welfare of R.V.*, 702 N.W.2d 294, 298 (Minn. App. 2005).

A district court abuses its discretion if its findings of fact are unsupported by the record or if it improperly applies the law or if it resolves the question in a manner that is contrary to logic and the facts on record. *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022).

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 (quotations 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.

G.A.B. challenges only the third *Austin* factor: “that [the] need for confinement outweighs the policies favoring probation.” *Austin*, 295 N.W.2d at 250. He asserts that the district court revoked EJJ probation “reflexively based on the number of violations.” We disagree that the district court abused its discretion because its order reflects that it found at least one *Modtland* subfactor and its findings are supported by the record.

The first *Modtland* subfactor asks whether “confinement is necessary to protect the public from further criminal activity by the offender” and the third subfactor asks whether “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 found that “[r]einstatement on [EJJ] would unduly depreciate the violations and fail to address the public safety concerns.”

The record supports these findings on the first and third subfactors. G.A.B. had previously violated probation by committing new criminal offenses. And one of the probation violations involved here was for two new criminal offenses—controlled-

substance possession/use and improper license plates. And despite having multiple opportunities to address his chemical-dependency issues—most recently through inpatient treatment—G.A.B. continually failed to complete the CLIPS program and used controlled substances. Based on G.A.B.’s history, it was not an abuse of discretion for the district court to conclude that the new offenses here were “serious in nature” and that reinstating EJJ probation would depreciate the seriousness of the violations as well as fail to address public-safety concerns.

The second *Modtland* subfactor asks whether “the offender is in need of correctional treatment which can most effectively be provided if he is confined.” *Id.* (quotation omitted). The district court found that “there are no further available options in the juvenile system appropriate for the child. All appropriate options in the juvenile system have been exhausted.”

The record supports this finding. G.A.B. had a history of successfully completing more restrictive programming and then failing to complete less restrictive programming due to program violations such as controlled-substance use and absconding from his placement. Even after completing the most restrictive placement in the juvenile system—the placement at Red Wing—he failed to transition into and complete the CLIPS program. Based on G.A.B.’s history, it was not an abuse of discretion for the district court to have found that there were no further, effective options available other than confinement in the adult system. The district court’s order and the record demonstrate that revocation in this case was a last resort rather than a reflexive reaction to the number of violations G.A.B. had accrued.

G.A.B. cites three nonprecedential opinions in support of his contention that we must reverse the district court's revocation for abuse of discretion. Nonprecedential opinions are not binding on this court. Minn. R. Civ. App. P. 136.01, subd. 1(c). And the factual dissimilarities between G.A.B.'s case and the nonprecedential opinions cited render those opinions unpersuasive here.

In *In re Welfare of G.V.*, we reversed the district court's order revoking EJJ probation. No. A05-2351, 2006 WL 2474086, at *4 (Minn. App. Aug. 29, 2006). In that case, EJJ probation was revoked because the juvenile had not completed a program and his EJJ probation was set to expire. *Id.* at *1. But, in the four years that the juvenile was on EJJ probation, he did not commit any additional criminal offenses and he was making "significant progress" in the program. *Id.* at *4. G.A.B.'s EJJ probation was not revoked because he would be unable to complete the CLIPS program before his probation was set to expire—it was revoked after he was unsuccessfully discharged from the program. Further, unlike the juvenile in *G.V.*, G.A.B. committed several additional criminal offenses and the record does not clearly demonstrate that he was making "significant progress."

In *State v. N.R.S.*, we reversed the district court's order revoking EJJ probation because, during the 17-month period during which the district court deferred disposition on a probation violation, the juvenile "made significant strides in his personal life and education" and successfully completed inpatient chemical-dependency treatment. No. A11-523, 2011 WL 6351868, at *4-5 (Minn. App. Dec. 20, 2011). There was no such deferral period here. And while G.A.B. successfully completed an inpatient chemical-dependency treatment program since the last disposition hearing, he failed to transition into

and complete the CLIPS program again, absconded, and committed several new criminal offenses—demonstrating his pattern of failure to transition from a more restrictive placement to a lesser one.

In *State v. G.D.T.*, we reversed the district court’s order revoking EJJ probation. No. A13-1515, 2014 WL 1272383, at *4 (Minn. App. Mar. 31, 2014). But, importantly in that case, probation recommended placement in the Red Wing program, which the juvenile had not yet completed, because the program could impose the structure the juvenile needed. *Id.* at *2-3. Here, probation did not recommend placement at Red Wing. Further, G.A.B. had already been placed at Red Wing and had demonstrated that such a placement did not solve his inability to transition back into the community and abide by the rules of less restrictive programs.

The district court’s order and the record demonstrate that the district court did not reflexively revoke G.A.B.’s EJJ probation based on the number of probation violations; rather, the district court revoked G.A.B.’s EJJ probation because it found that the need for confinement outweighed the policies favoring probation. Further, the nonprecedential cases that G.A.B. cites are factually distinguishable from the case at hand and have little persuasive value. We therefore conclude that the district court did not abuse its discretion in revoking G.A.B.’s EJJ probation and executing his adult sentence.

Affirmed.