

*This opinion is nonprecedential except as provided by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
A23-1875**

State of Minnesota,
Respondent,

vs.

Rajiv Thomas Kjorsvig,
Appellant.

**Filed July 15, 2024
Affirmed
Worke, Judge**

St. Louis County District Court
File No. 69VI-CR-16-799

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

Kimberly J. Maki, St. Louis County Attorney, Bonnie Norlander, Assistant County Attorney, Virginia, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schmidt, Presiding Judge; Worke, Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges the revocation of his probation, arguing that the district court abused its discretion by determining that the state showed that (1) he violated the terms of

his probation, (2) his violations were intentional and inexcusable, and (3) the need for confinement outweighed policies favoring probation. We affirm.

FACTS

In 2018, appellant Rajiv Thomas Kjorsvig pleaded guilty to first-degree criminal sexual conduct and received a stay of adjudication and five years of supervised probation. Kjorsvig indicated that he understood and agreed to follow all probationary conditions, including completing a psychosexual evaluation.

In June 2020, a probation-violation report alleged that Kjorsvig failed to report to probation as directed and failed to complete a sex-offender treatment program. Kjorsvig admitted to the violation and his probation was continued. He was required to serve one year in jail or at North East Regional Corrections Center (NERCC) and that he enter and complete sex-offender treatment programming while at NERCC.

In March 2022, a second probation-violation report alleged that Kjorsvig was charged with several new offenses and also violated the no-use provision of his probation by consuming a six pack of beer. Kjorsvig admitted the violations, and the district court entered judgment of conviction and stayed imposition of the sentence. Kjorsvig was also required to register as a predatory offender and remain in custody until a chemical-dependency evaluation was completed.

In July 2022, Kjorsvig's sentence was amended to require him to serve 45 days at NERCC to complete chemical-dependency treatment. He was released from NERCC on July 28, 2022.

On October 17, 2022, a third probation-violation report alleged that Kjorsvig failed to: (1) report to his probation officer as directed, (2) enter outpatient chemical-dependency treatment as recommended upon his completion of his chemical-dependency treatment at NERCC, and (3) enter and participate in sex-offender treatment.

At a contested hearing on August 29, 2023, the district court heard testimony from Kjorsvig and his probation officer regarding each of the three alleged violations. First, the probation officer testified that Kjorsvig attempted to contact her, but his attempts were after hours or on the wrong day. When she tried to contact him, she could not reach him or leave a voicemail. Second, the probation officer testified that Kjorsvig never set up the recommended chemical-dependency-treatment aftercare. Third, both the probation officer and Kjorsvig testified that he did not reengage with sex-offender treatment as required.

The district court found that the state proved by clear and convincing evidence that Kjorsvig violated probation, that those violations were intentional and inexcusable, and that the need for confinement outweighed the policy interests in favor of probation. The district court also explicitly found that the probation officer's testimony was credible and that Kjorsvig's was not.

The district court revoked Kjorsvig's probation and imposed and executed a 144-month prison sentence. This appeal followed.

DECISION

Kjorsvig argues that the district court abused its discretion by revoking his probation.

Before a district court may revoke probation, it must find that: (1) the probationer violated a specific condition of probation; (2) the violation was intentional or inexcusable; and (3) the need for confinement outweighs the policies favoring probation. *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). These findings are commonly known as the *Austin* factors. In making these findings, the district 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).

Although a district court must make the necessary findings on the *Austin* factors to revoke probation, a 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.” *Austin*, 295 N.W.2d at 249-50. “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. Lopez*, 988 N.W.2d 107, 122 (Minn. 2023) (quotation omitted).

Kjorsvig challenges the district court’s findings on each of the *Austin* factors, which we address in turn.

Probation violations

Kjorsvig argues that the district court abused its discretion by determining that the state presented clear and convincing evidence that he violated the terms of his probation.

The district court determined that the state proved by clear and convincing evidence that Kjorsvig violated probation by failing to attend required chemical-dependency and sex-offender treatment after his release. First, the district court determined that Kjorsvig failed to follow the recommendations from his chemical-dependency assessment for

treatment. The probation officer testified that Kjorsvig failed to comply with the recommended treatment. And Kjorsvig testified that he did not contact the treatment provider after he was released. In finding that Kjorsvig failed to participate in sex-offender treatment, the district court highlighted that the probation officer's testimony and discharge summary from the sex-offender treatment provider support that Kjorsvig failed to complete treatment and again, Kjorsvig testified that he did not complete the treatment after his release.

Based on our careful review of the record, we conclude that the record supports the district court's findings that Kjorsvig failed to complete the required treatment. The evidence in the record—including Kjorsvig's own testimony—shows that he failed to participate in and complete the required treatment.

Intentional or inexcusable

Second, Kjorsvig argues that the district abused its discretion by determining that the state presented clear and convincing evidence that his probation violations were intentional and inexcusable.

Before revoking probation, the district court must find that the state proved by clear and convincing evidence that the probation violations were "intentional or inexcusable." *State v. Cottew*, 746 N.W.2d 632, 636 (Minn. 2008) (quotation omitted). "A violation is mitigated [when] it was unintentional or excusable." *Id.*

Kjorsvig argues that the record does not support that his violations were intentional or inexcusable because they were technical in nature. *See Austin*, 295 N.W.2d at 251 (providing that district court's decision to revoke probation cannot be a "reflexive reaction

to an accumulation of technical violations”). This argument is unavailing. In support, Kjorsvig claims that his own testimony shows that his violations were technical in nature and unintentional. However, the district court did not find his testimony to be credible and we defer to the district court’s credibility determinations. *See State v. Losh*, 694 N.W.2d 98, 102 (Minn. App. 2005), *aff’d*, 721 N.W.2d 886 (Minn. 2006).

Kjorsvig next contends that the district court “did not issue a written order and it did not specify why it found the violation intentional and inexcusable rather than the result of repeated technical violations or the whim of the judge’s will.” However, the district court explained at the hearing and in its written order the evidentiary and legal basis for its conclusions. Kjorsvig does not show how the district court acted reflexively. *See Austin*, 295 N.W.2d at 251. In fact, our review of the record indicates that the district court thoroughly and carefully explained its reasoning and conclusions based on the evidence in the record at every stage of this proceeding.

Confinement outweighs probation

Third, Kjorsvig contends that the district court abused its discretion by determining that the need for his confinement outweighed policies favoring probation.

The third *Austin* factor 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). When analyzing this factor, district courts consider three subfactors (the *Modtland* subfactors): (1) whether “confinement is necessary to protect the public from further criminal activity”; (2) if “the offender is in need of correctional treatment which can most effectively be provided if he

is confined”; or (3) whether “it would unduly depreciate the seriousness of the violation if probation were not revoked.” *Id.* at 607 (quoting *Austin*, 295 N.W.2d at 251). “Only one *Modtland* subfactor is necessary to support revocation.” *State v. Smith*, 994 N.W.2d 317, 320 (Minn. App. 2023), *rev. denied* (Minn. Sept. 27, 2023).

The district court determined that the need for confinement outweighed the policies favoring probation because treatment can be more effectively provided for Kjorsvig while he is confined, and it would depreciate the severity of his violations if his probation were not revoked.

Kjorsvig first argues that he has been “largely compliant” with the terms of his probation. Again, in making this argument, Kjorsvig relies on his own testimony about the conditions of his probation and the violations, which the district court did not find credible. *See Losh*, 694 N.W.2d at 102. Moreover, the record belies this assertion. Though Kjorsvig did not violate his probation between his conviction in 2017 and his first violation in 2020, he has violated his probation three times since and the violation report triggering this revocation proceeding included three separate violations.

Kjorsvig next contends that the district court abused its discretion by revoking his stay when it was not necessary. Kjorsvig relies on *Austin*, in which the supreme court cautioned district courts against revoking probation as “a reflexive reaction to an accumulation of technical violations” or a decision based on “their will” rather than “sound judgment.” 295 N.W.2d at 251 (quotation omitted).

Our careful review of the record indicates the opposite. As explained previously, the record does not support that Kjorsvig’s violations were technical in nature. And the

district court's handling and consideration of this case was exemplary in many ways—it issued multiple continuances for Kjorsvig to obtain his choice of counsel, to allow the parties to obtain further helpful evidence, and to weigh the arguments and review the evidence independently outside of court. At each hearing, the district court's sound judgment was further demonstrated by the time it spent summarizing what had happened previously in great detail, hearing from the state, Kjorsvig's counsel, and Kjorsvig on each issue, stressing the importance of these proceedings to Kjorsvig's life, and explaining each of its decisions. Thus, we disagree that the district court failed to “take care” with its decision to revoke Kjorsvig's probation on this record.

In sum, the district court did not abuse its discretion in its weighing of the three *Austin* factors and by revoking Kjorsvig's probation.

Affirmed.