

*This opinion is nonprecedential except as provided by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
A24-0169**

State of Minnesota,
Respondent,

vs.

Joshua Russell Lutz,
Appellant.

**Filed August 12, 2024
Reversed and remanded
Harris, Judge**

Sherburne County District Court
File No. 71-CR-18-1513

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

Kathleen A. Heaney, Sherburne County Attorney, George R. Kennedy, Assistant County Attorney, Elk River, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

HARRIS, Judge

Appellant challenges the revocation of his probation, arguing that the district court failed to make sufficient findings to conclude that the need for confinement outweighs the

policies favoring probation. Because the district court did not make adequate findings about the third *Austin* factor and the *Modtland* subfactors, we reverse and remand.

FACTS

In October 2018, respondent State of Minnesota charged appellant Joshua Russell Lutz with first-degree sale of cocaine. Lutz pleaded guilty to the charge, and the district court granted him a downward dispositional departure to probation, imposed a 64-month sentence, and stayed execution of that sentence for 20 years. The conditions of probation, as relevant here, included remaining law-abiding, refraining from using or possessing non-prescribed mood-altering substances (including alcohol), and submitting to random drug screenings.

In November 2020, Sherburne County Community Corrections submitted a probation-violation report alleging that Lutz violated the terms of his probation by failing to remain law-abiding, failing to enroll in treatment, failing to serve jail time, and failing to pay restitution. Three months later, Sherburne County submitted an addendum, alleging that Lutz violated his probation by testing positive for mood-altering substances. Lutz admitted to these violations at a contested-revocation hearing. The district court reinstated Lutz's probation with the same conditions and additional jail time as an intermediate sanction.

In October 2023, Anoka County Corrections filed a probation-violation report alleging that Lutz failed to remain law-abiding, failed to provide urinalysis (UA), and failed to abstain from using mood-altering substances. The report indicated that he had been

charged with felony criminal vehicular operation, gross-misdemeanor test refusal, and gross-misdemeanor driving while impaired (DWI).

One week later, just before his probation-violation hearing, Lutz tested positive for methamphetamine and tetrahydrocannabinol (THC). The state asked the district court to execute his sentence given the multiple probation violations since 2019. Based on Lutz's continued drug use, failure to comply with drug screening, and his pending DWI, the court concluded that Lutz's actions raised public-safety concerns and therefore ordered him to be held until his contested-revocation hearing.

At his contested-revocation hearing, Lutz admitted to violating the terms of his probation based on failure to provide UAs and failure to refrain from using or possessing nonprescribed mood-altering substances. More specifically, Lutz admitted that he failed to provide UAs on numerous occasions, and on the days he did provide UAs, he tested positive for methamphetamine. At the contested-revocation hearing, Lutz, through his trial counsel, informed the district court that he is not admitting to violating probation by failing to remain law-abiding. The state agreed, stating that it was not seeking admission on the pending charges. The district court told Lutz that it would not ask him about his pending criminal charge, and it would also not rule on it. The state asked the district court to execute the stayed sentence.

Based on his admissions, the district court found Lutz's violations intentional and inexcusable, and that the need for confinement outweighed the policies favoring probation because it would unduly depreciate the seriousness of the violations if his probation were not revoked. The district court added that Lutz has continued to harm himself by using

substances and disobeying the court's orders, and that his criminal operation of a motor vehicle implicated public safety. For these reasons, the court determined that confinement was necessary to protect the public from further criminal activity and therefore executed his 64-month sentence. This appeal follows.

DECISION

A district court may revoke an offender's probation if it finds that (1) the defendant violated a 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). When applying these *Austin* factors, courts "must seek to convey their substantive reasons for revocation and the evidence relied upon." *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005). District courts should also "not assume that they have satisfied *Austin* by reciting the three factors and offering general, non-specific reasons for revocation." *Id.* Moreover, revoking 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 (quotations omitted).

"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." *Id.* 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." *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quotation omitted). Whether the district court

made the requisite *Austin* findings is a question of law, which appellate courts review de novo. *Modtland*, 695 N.W.2d at 605.

Lutz argues that the district court abused its discretion when it found that the need for his confinement outweighed the policies favoring probation.¹ He specifically argues that the district court failed to provide the specific, substantive reasons, and the evidence it relied on in revoking his 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.” *Id.* at 607 (quotation omitted). This inquiry requires a district court to consider three *Modtland* subfactors: (1) whether “confinement is necessary to protect the public from further criminal activity”; (2) whether “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.* (quotation omitted). “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). Notably, district courts must “create thorough, fact-specific records setting forth their reasons for revoking probation.” *Modtland*, 695 N.W.2d at 608.

In determining that the third *Austin* factor was met, the district court stated:

Based on the admissions here today, I do find that you’re in violation of the terms of your probation, that those violations are intentional and inexcusable, and as a result of those violations I am revoking your term of probation. I do

¹ Lutz also argues that, even if the district court’s findings were adequate, the district court abused its discretion by revoking probation rather than imposing an intermediate sanction. We decline to address that argument because we resolve this case based on the inadequate *Austin* findings.

find that there is—that the need for confinement in this case outweighs any policies favoring probation because I find that it would unduly depreciate the seriousness of the violations if your probation was not revoked.

This is a case not only where you have been causing harm to yourself by using and continuing to use as well as just completely disobeying the Court's orders, but there are also new allegations of criminal conduct. And, again, not just conduct involving yourself and your use, but new allegations of Criminal Vehicular Operation of a Motor Vehicle which directly puts the public safety at risk.

I do find that confinement is necessary to protect the public from further criminal activity of Mr. Lutz, and for those reasons I am ordering that you be committed to the Commissioner of Corrections for a period of 64 months.

Before revoking probation, district courts must “create thorough, fact-specific records setting forth their reasons for revoking probation.” *Modtland*, 695 N.W.2d at 608. After all, it is not this court's role “to scour the record to determine if sufficient evidence exists to support the district court's revocation.” *Id.* While the district court provided general reasons for revoking probation and cites the third *Austin* factor and the third *Modtland* subfactor as its support for the third *Austin* factor, the district court's analysis of the third *Austin* factor demonstrates it relied on allegations that Lutz engaged in criminal conduct. But Lutz did not admit to those allegations of criminal activity and those allegations therefore cannot form the basis of a probation revocation. The state and Lutz agreed that the district court would not consider those allegations and that, should Lutz be convicted, the state could seek sanctions in the future. As a result, we conclude that the district court revoked Lutz probation based on allegations of criminal activity that he did not admit to at the contested revocation hearing and did not make adequate findings on the

third *Austin* factor. We therefore reverse the district court's probation-revocation decision and remand for the district court to make further findings consistent with our opinion.

In sum, because the district court based its decision to revoke Lutz probation on allegations that were not admitted or proved at the contested revocation hearing and did not make adequate findings on the third *Austin* factor, we reverse the district court's probation-revocation decision and remand for the district court to make sufficient findings in accordance with the requirements of *Austin* and *Modtland*.

Reversed and remanded.