

*This opinion is nonprecedential except as provided by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
A24-0405**

State of Minnesota,
Respondent,

vs.

Johnathan Casper Hassig,
Appellant.

**Filed September 9, 2024
Affirmed
Frisch, Judge**

Wabasha County District Court
File No. 79-CR-20-786

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

Matthew Stinson, Wabasha County Attorney, Wabasha, Minnesota (for respondent)

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

Considered and decided by Cochran, Presiding Judge; Connolly, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant challenges the revocation of his probation, arguing that he received insufficient notice of a violation and that the district court did not properly consider whether the need for confinement outweighed the policies favoring probation. Because

appellant received sufficient notice of his violations, and the district court did not abuse its discretion by revoking probation, we affirm.

FACTS

Appellant Johnathan Casper Hassig pleaded guilty to one count of third-degree criminal sexual conduct. Pursuant to the plea agreement, the district court stayed imposition of sentence and placed Hassig on probation for 15 years, the terms of which included a 365-day period of electronic home monitoring (EHM) in lieu of jail time, refraining from having contact with minor females, remaining law-abiding, refraining from the use of alcohol and controlled substances, completion of a chemical-use assessment, and completion of a psychological sexual evaluation and sex-offender treatment.

Respondent State of Minnesota filed a probation-violation report, alleging that Hassig violated the condition of his probation that he be on EHM in lieu of jail time because he was terminated from his EHM program for nonpayment. Hassig admitted to the violation. The district court imposed an intermediate sanction of seven days in the county jail.

The state filed a second probation-violation report, alleging that Hassig violated the condition of his probation that he refrain from having contact with minor females. Specifically, the state alleged that a 17-year-old female spent the night at Hassig's home and that Hassig had been arrested and charged with contributing to the delinquency of a minor. The state later filed an addendum to the second probation-violation report, adding allegations that Hassig violated probation by using a controlled substance and did not complete a chemical-use assessment and intensive outpatient treatment for chemical use.

Hassig admitted to all three violations, but later explained that his failure to complete chemical-use treatment was because the programming occurred at the same time as sex-offender treatment. The district court determined that his probation-condition violations of contact with minor females and chemical use were intentional and inexcusable, but that his failure to complete chemical-use treatment was excusable. And the district court determined that treatment would not be most effectively provided in confinement. The district court revoked the stay of imposition of sentence and imposed the sentence of 15 months' imprisonment. It stayed execution of that sentence and ordered that Hassig serve five days in the county jail, complete a chemical assessment, follow the recommendations from an evaluation, and re-enroll in a specific sex-offender treatment program.

The state and Hassig later agreed through a sanctions conference that Hassig would be subject to 12 months of monitoring software on his electronic devices because Hassig violated probation by having third-party contact with a minor. The district court ordered 12 months of monitoring software on Hassig's electronic devices.

The state later filed a third probation-violation report, alleging that Hassig violated probation because he was terminated from the sex-offender treatment program due to "poor attendance and lack of progress." The district court held a contested probation-violation hearing. The hearing first focused on whether Hassig violated the terms of probation. A probation officer, who was not Hassig's supervising officer, testified that there were two violations: (1) "[t]he new charges and conviction in Olmsted County for contributing to the delinquency of a minor" and (2) "[Hassig] leaving sex offender treatment without

successful completion.” The probation officer testified that “[t]he conviction date was October 1, and he was convicted for gross misdemeanor contributing to the delinquency of a minor and sentenced under a stay of imposition.” The probation officer further testified that the new conviction was not included in a probation-violation report, that Hassig was ordered to remain law-abiding as part of his probation, and that the second probation-violation report contained allegations of a violation based on the same incident that resulted in the new conviction but that the criminal nature of the incident was not part of the second probation violation. The probation officer testified that the treatment provider stated that Hassig admitted that he did not show up for treatment because “he had gotten a new job, and wouldn’t be able to make the schedule work.” The probation officer also testified that Hassig was looking up sex-offender treatment programs on his monitored electronic device.

Hassig testified that he was terminated from his sex-offender treatment program. He testified that he got a job working from 7:00 a.m. until about 4:00 or 5:00 p.m., Monday through Friday, and that his sex-offender treatment program was from 10:00 a.m. until about 11:30 a.m. Hassig testified that he requested treatment at a different time, but the program did not accommodate that request. Hassig also testified about his criticisms of the sex-offender treatment program and his efforts to enroll in a different program. Hassig admitted that he was terminated in part because he was not participating in treatment, and that he was not doing so because of the program’s attempt to modify his thinking and behavior and because they were not covering the materials that the program had outlined. Hassig testified that he prioritized his job over treatment because it offered him financial

stability and job security. The district court determined that Hassig violated the terms of his probation that he be law-abiding and that he complete sex-offender treatment, and that these violations were intentional and inexcusable.

The focus of the hearing then turned to whether the need for confinement outweighed the policies favoring probation. The probation officer testified that the circumstances leading to the criminal complaint involved Hassig's "contact with two females who were under the age of eighteen," that he "encouraged them to come to his apartment, and he would provide vape and cigarettes to them," and that the females spent the night. The probation officer testified that it would take approximately one month before Hassig could begin the sex-offender treatment program available through the department of corrections. The probation officer testified that Hassig was having attendance issues with treatment and that his participation and performance was below average.

The district court concluded that the need to confine Hassig outweighed the policies favoring probation. It revoked probation and executed the stayed sentence of 15 months' imprisonment with a 10-year conditional-release term and credit for 53 days of time served.

Hassig appeals.

DECISION

A district court may revoke probation when a probationer violates a condition of their probation. Minn. Stat. § 609.14, subd. 1 (2022);¹ *see also* Minn. R. Crim. P. 27.04

¹ Minn. Stat. § 609.14 (2022) was amended to add a subdivision stating that "[c]orrectional treatment is better provided through a community resource than through confinement and would not unduly depreciate the seriousness of the violation if probation was not revoked"

(setting forth the procedure for probation revocation). Hassig argues that the district court abused its discretion by revoking his probation because the district court (1) relied on a probation-violation allegation that the state did not properly notice before the probation-revocation hearing in deciding to revoke probation and (2) did not sufficiently analyze whether the need to confine Hassig outweighed the policies favoring probation. The state did not file a responsive brief. We address Hassig’s arguments in turn.

I. The district court did not violate due-process requirements by revoking probation based on Hassig’s new criminal conviction.

Hassig argues that the district court improperly revoked probation by relying on a new gross-misdemeanor conviction that was not alleged or noticed as a probation violation.² A probationer is entitled to procedural due process as part of a revocation proceeding. *State v. Beaulieu*, 859 N.W.2d 275, 280 (Minn. 2015). Such due process requires that a probationer be given written notice of the alleged violations. *State v. Austin*, 295 N.W.2d 246, 252 (Minn. 1980); Minn. Stat. § 609.14, subd. 2 (2022) (providing that a probationer must be notified in writing of the alleged probation violation); Minn. R. Crim. P. 27.04, subd. 1(2)(b) (same). The written notice must include “a factual statement

and listing circumstances in which “[p]olicies favoring probation outweigh the need for confinement if a person has not previously violated a condition of probation” and for which imposition or execution of a sentence is not warranted. Minn. Stat. § 609.14, subd. 1a (Supp. 2023). The amendment became effective on August 1, 2023, for violations that occur on or after that date. 2023 Minn. Laws ch. 52, art. 17, § 33, at 1114-15. Because this was not Hassig’s first probation violation, we cite the 2022 version of the statute.

² Hassig also noted that “the conduct involved in the new gross-misdemeanor conviction had already been admitted to and punished” at the hearing for Hassig’s second probation violation. But Hassig does not assert that this is a basis for reversal.

supporting probable cause to believe the probationer violated the terms of probation.” Minn. R. Crim. P. 27.04, subd. 1(1)(2)(d). “Whether a defendant has been denied due process of law is a question of law that we review de novo.” *Beaulieu*, 859 N.W.2d at 280.

The third probation-violation report, which was filed on August 2, 2023, did not list Hassig’s conviction for contributing to the delinquency of a minor as an alleged violation of probation. But the state included information about the charge under the recommendations portion of the report and under Hassig’s criminal history, in which the state included the charge as “pending” as of the date of the report. The conviction was later entered on October 1, 2023. Although the report was not updated to include the conviction as a distinct violation of the terms of Hassig’s probation, we conclude that the report was sufficient to satisfy Minn. R. Crim. P. 27.04(2). Hassig had adequate warning in the report that the conviction resulting from the identified charge could come up during the contested hearing for his third probation violation because the underlying facts of that conviction were included in the report.

II. The district court sufficiently analyzed whether the need for confinement outweighed the policies favoring probation.

Hassig next challenges the district court’s analysis of one factor that a court considers when deciding whether to revoke probation—that the “need for confinement outweighs the policies favoring probation.” *Austin*, 295 N.W.2d at 250. Hassig argues that the district court erred in concluding that confinement outweighed the policies favoring probation because (1) the only alleged violation properly before the district court was Hassig’s failure to complete treatment; (2) that failure was based on Hassig prioritizing a

job over his treatment, and his financial needs were not a proper basis to revoke probation; and (3) there were community-based options for sex-offender treatment that the district court did not consider. In other words, Hassig argues that the “district court’s findings here are more indicative of a reflexive revocation following a third violation, rather than one that fully weighed the value of Hassig’s full-time employment and the possibility of a treatment program that would be compatible with his work schedule.”

A district court’s decision to revoke 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). Before a district court revokes probation, it must (1) “designate the specific condition or conditions that were violated,” (2) “find that the violation was intentional or inexcusable,” and (3) “find that [the] need for confinement outweighs the policies favoring probation.”³ *Id.* at 250; *see also State v. Modtland*, 695 N.W.2d 602, 606 (Minn. 2005) (referring to these findings as the “*Austin* factors”). “[I]n making the three *Austin* findings, courts are not charged with merely conforming to procedural requirements; rather, courts must seek to convey their substantive reasons for revocation and the evidence relied upon.” *Modtland*, 695 N.W.2d at 608. The district court “must balance the probationer’s interest in freedom and the state’s interest in insuring his rehabilitation and the public safety.” *Id.* at 606-07 (quotation omitted). And the district

³ Because the district court conducted a contested revocation hearing, the district court was required to make written findings of fact. Minn. R. Crim. P. 27.04, subd. 3(3). Hassig notes that such findings must be written but does not challenge the lack of written findings on appeal.

court must bear in mind that “the purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed.” *Id.* at 606 (quotation omitted).

In determining whether the need for confinement outweighs the policies favoring probation, a district court considers (1) whether “confinement is necessary to protect the public from further criminal activity by the offender,” (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.* at 607 (quotation omitted); *see also State v. Smith*, 994 N.W.2d 317, 320 (Minn. App. 2023) (referring to these considerations as the “*Modtland* subfactors”), *rev. denied* (Minn. Sept. 27, 2023). The district court needs to identify only one of these subfactors to establish the need for confinement. *Smith*, 994 N.W.2d at 320 (“Only one *Modtland* subfactor is necessary to support revocation.”). 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. But “whether a lower court has made the findings required under *Austin* presents a question of law which is subject to de novo review.” *Modtland*, 695 N.W.2d. at 605.

The district court ruled on the third *Austin* factor as follows:

[T]he first issue when I determine whether or not confinement outweighs the policies favoring probation, I need to determine whether confinement is necessary to protect the public from further criminal activity. Then there’s two other factors that I’ll get into. I do find that confinement is necessary to protect the public from further criminal activity. In summary, we had an instance where it may not have been

criminal sexual conduct, but there certainly was a conviction that involved others. My concern is that to simply determine otherwise is really contrary to what the facts are. There's actually been a demonstration that when Mr. Hassig is not confined, the public is not protected from further criminal activity.

As far as the next factor which is whether the need for correctional treatment can most effectively be provided during confinement, to be very frank I think that's a close call. I'm not sure. What we may get into in just a moment is what would the time frame be. Exactly how long would Mr. Hassig have to serve. So I am determining that the factor related to the need of correctional treatment whether that could most effectively be provided during confinement, I'm not convinced that's true, so I'm not making that determination.

The last factor is whether it would unduly depreciate the seriousness of the violation if probation is not revoked. I think it would unduly depreciate it. There's been prior violations. The reasons given for not completing [sex-offender treatment] as I indicated earlier I find them intentional and inexcusable. It seems to me that, Mr. Hassig, you decided you're going to put work ahead of your conditions. It was very clear you had to complete treatment. So you basically had that opportunity. You didn't do it because you chose to work and because you felt that they were trying to change your thinking. I don't think you understand really what this programming is about. It is to assist you in changing your thinking as I indicated earlier.

Hassig first asserts that the only "noticed" violation related to Hassig's decision to take a full-time job. As discussed above, we conclude that Hassig had adequate notice that his new conviction could be discussed at the contested hearing, and we therefore decline to limit the violations for which the district court could base its reasoning on the third *Austin* factor.

Hassig next asserts that it was improper for the district court to revoke probation based on Hassig's decision to prioritize his job because it did not fully consider the

financial importance of that job before revoking probation. In support of this argument, Hassig cites *State v. Morrow* for the proposition that a court must inquire into the reasons for the failure to pay before revoking probation. 492 N.W.2d 539, 544 (Minn. App. 1992). In *Morrow*, we concluded that the district court did not violate a defendant's due-process or equal-protection rights when it revoked probation after determining that there were no funding options available, from a third-party or the defendant, to pay for the treatment that the court ordered as a condition of probation. *Id.* at 542-49. Hassig did not assert that he was terminated from sex-offender treatment because he was unable to pay. And while we understand the importance of Hassig's financial stability and housing security, which this job offered, the district court's conclusion that Hassig needed to prioritize satisfying the conditions of his probation was not an abuse of discretion.

Hassig finally asserts that the district court did not adequately explain why other community-based treatment options were not available to Hassig. The district court's findings and explanation of its decision could have been more thorough. *Modtland*, 695 N.W.2d at 606-08 (explaining the need to carefully balance the probationer's and the state's competing interests and that the analysis framework is designed to "create throughout, fact-specific records setting forth [the district court's] reasons for revoking probation" and that "courts must seek to convey their substantive reasons for revocation and the evidence relied upon"). But this is not a case where the district court offered no reasoning or evidence on which it based its decision to revoke probation. Rather, the district court considered and made findings for each *Modtland* subfactor. Notably, the district court pointed to Hassig's testimony that he did not like that sex-offender treatment aimed to

change his thinking. The district court explained that it did not believe that Hassig understood that the purpose of treatment was to change his thinking. On this record, we conclude that the district court sufficiently analyzed and explained its determination that the need for confinement outweighed the policies favoring probation.

Affirmed.