

*This opinion is nonprecedential except as provided by  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  
A24-0608**

State of Minnesota,  
Respondent,

vs.

Abigail Violet Hollingsworth,  
Appellant.

**Filed November 25, 2024  
Affirmed  
Connolly, Judge**

Pipestone County District Court  
File No. 59-CR-23-263

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

Damain Sandy, Pipestone County Attorney, Pipestone, Minnesota (for respondent)

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

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

**NONPRECEDENTIAL OPINION**

**CONNOLLY**, Judge

Appellant challenges the district court's decision to revoke her probation and  
execute her prison sentence. Because we discern no abuse of discretion, we affirm.

## FACTS

In July 2023, respondent State of Minnesota charged appellant Abigail Violet Hollingsworth with first-degree possession of a controlled substance in violation of Minn. Stat. § 152.021, subd. 2(a)(1), (b) (2022). The complaint alleged that, during a search of appellant's apartment, law enforcement discovered "a homemade water bong" containing 7.5 fluid ounces of water. The complaint also alleged that the water in the bong field-tested positive for methamphetamine.

Appellant pleaded guilty to the charged offense. Because appellant had a criminal-history score of two, the presumptive sentence for appellant's offense was 85 months in prison. The district court sentenced appellant to the presumptive sentence of 85 months, but stayed execution of that sentence, placed her on probation for five years, and imposed 180 days of local confinement. As a condition of appellant's probation, she was required to complete Minnesota Cornerstone Treatment Court (MCTC).

In January 2024, a probation violation report was filed alleging that appellant (1) failed to abstain from controlled substances; (2) failed to obtain permission to leave the state; and (3) failed to successfully complete MCTC. A probation violation hearing was then held at which appellant admitted to the violations. Specifically, appellant acknowledged that she left treatment on December 23, 2023, on her "weekend pass for Christmas," went to South Dakota without her probation agent's permission, and obtained and used fentanyl. Appellant also acknowledged that, as a result of her use, she was terminated from MCTC.

The district court found that appellant violated the terms of her probation, that the “violations were intentional and inexcusable,” and that “the need for confinement outweighs the policies favoring continued probation.” The district court, therefore, revoked appellant’s probation and executed her prison sentence. This appeal follows.<sup>1</sup>

### DECISION

Appellant argues that the district court abused its discretion in revoking her probation. “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.” *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quotation omitted).

Before a district court may revoke probation, it must: (1) identify the condition 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. *Austin*, 295 N.W.2d at 250. “[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.” *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005). We review de novo whether a district court made the required *Austin* findings. *Id.* at 605.

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<sup>1</sup> Respondent did not file a brief in this matter, and this court issued an order stating that the “case shall be determined on the merits as provided in Minn. R. Civ. App. P. 142.03.”

Appellant’s challenge is limited to the third *Austin* factor: “whether the need for confinement outweighs the policies favoring probation.” *Id.* at 606. When determining whether to revoke probation, the district court “must balance the probationer’s interest in freedom and the state’s interest in insuring [her] rehabilitation and the public safety.” *Id.* at 606-07 (quotation omitted). The district 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 balancing the probationer’s and the state’s interests, a district court should consider (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). Only one of these circumstances is necessary to establish the need for confinement. *See id.* (using the disjunctive “or” in discussing the basis for revocation); *State v. Smith*, 994 N.W.2d 317, 320 (Minn. App. 2023) (“Only one *Modtland* subfactor is necessary to support revocation.”), *rev. denied* (Minn. Sept. 27, 2023).

Appellant argues first that the district court’s finding that confinement is necessary to protect the public from further criminal activity is not supported by the record because there “was no allegation that [appellant] drove while intoxicated,” and there is no finding that she “hurt anyone, or that her treatment program’s plan to prevent future relapses would be ineffective.” We disagree. The record reflects that the district court specifically asked appellant’s attorney at the probation-violation hearing if appellant was “in fact driving

before and after—before she obtained the fentanyl, in order to obtain it, and after she consumed fentanyl?” Counsel for appellant replied: “it is my understanding that that is what happened, Your Honor.” As such, the record reflects that appellant placed the public, and herself, in danger by driving under the influence of fentanyl.

Moreover, the record reflects that appellant has past convictions for controlled-substance-related offenses. In referencing these past convictions, the district court found that “[d]espite [her] failure in the past to follow probation, despite [her] failure to complete drug court in the past, and despite [her] unwillingness to follow any pretrial conditions,” she was given a second chance and opportunity in this case. The district court then found that appellant failed to take advantage of this opportunity and, in fact, not only “continued to use” during the time this case was pending, but also got “kicked out of one treatment.” And the district court found that when appellant was out of treatment over the Christmas holiday, she “[n]ot only . . . use[d], but [was] someone who placed the general public in extreme danger by driving out of state, obtaining fentanyl, using fentanyl, and driving back.” Although appellant did not “hurt anyone,” the district court found that appellant failed to recognize the “danger” of her actions. Thus, the record supports the district court’s finding that confinement is necessary to protect the public from further criminal activity.

Appellant argues second that, “while the [district] court announced that [appellant] was in need of correctional treatment which could most effectively be provided if she were confined, this is not supported by the record.” But the district court emphasized appellant’s history of using controlled substances and repeatedly referenced her inability and “unwillingness” to take advantage of treatment options. The district court also noted that

appellant was “sentenced as a departure [in this case] and w[as] given an opportunity to complete probation,” but failed to take advantage of that opportunity by doing the very thing she was on probation for—using controlled substances. And the district court found that appellant “barely even acknowledge[s]” that her violation was “tremendous.” Although, as appellant points out in her brief, there appears to be some question if she would be eligible for treatment while incarcerated, the law does not require consideration of whether appellant is in need of treatment for controlled substances which can most effectively be provided if she is confined. *See Modtland*, 695 N.W.2d at 607. Rather, the law requires consideration of whether “the offender is in need of correctional treatment which can most effectively be provided if he is confined.” *Id.* In light of appellant’s violations, the record supports the district court’s finding that appellant is in need of “correctional treatment,” and that treatment can only be effectively provided if she is confined to prevent further use.

Third, appellant contends that the district court failed to adequately consider whether it would unduly depreciate the seriousness of the violation if probation were not revoked because the court “did not offer any analysis as to why [her] first violation, of a single relapse, was sufficiently serious to require revocation,” and failed to conclude that appellant “had exhausted options for chemical dependency treatment programming in the community.” But appellant’s argument ignores the district court’s extensive findings on the record related to the treatment opportunities provided to appellant. The district court found that appellant was given “many, many chances” since she was released from prison in March of 2022, and that despite her “failure to complete drug court in the past,” she was

given another “chance and opportunity” in this case when she was placed on probation and “accepted again into treatment court.” The district court also found that, despite again being accepted into treatment court, appellant “disregarded that and failed to take advantage of that opportunity.” And the district court found that appellant “continued to use” during the pendency of this case, which further demonstrates her disregard for treatment opportunities. Appellant’s continued drug use and repeated disregard for her treatment opportunities supports the district court’s decision to revoke appellant’s probation for her first violation.

Moreover, as addressed above, the district court emphasized the seriousness of appellant’s violation. The district court found that appellant “placed the general public in extreme danger by driving out of state, obtaining fentanyl, using fentanyl, and driving back.” In fact, the record indicates that appellant drove after consuming the fentanyl. The district court also found that “[i]t is unbelievable . . . how [she] do[es] not seem to recognize any of [her] public safety risk,” and “what a danger she is.” And the district court found that this was not a “reflexive or technical violation,” but was instead a “tremendous violation” for her “to disregard all of the efforts that were made to get [her] to comply with probation.” Therefore, the district court adequately considered whether it would unduly depreciate the seriousness of the violation if appellant’s probation were not revoked.

Finally, appellant argues that the “nature of [her] underlying offense does not weigh toward revocation.” To support her position, appellant points out that, in 2011, the legislature amended the definition of mixture in the controlled-substance statute to exclude the weight of the fluid in a water pipe in computing the weight of a mixture unless “the

mixture contains four or more fluid ounces of fluid.” 2011 Minn. Laws, ch. 53, §§ 6-8, at 4-6. She contends that, because she was convicted of a first-degree drug offense based solely on her possession of a water bong for personal use that had only a few more than four ounces of water in the bong, it was improper for the district court to “repeatedly reference[] the fact that [appellant] received a downward dispositional departure in its decision to revoke probation.”

Appellant’s argument is unavailing. Appellant cites no authority to support her position that it was improper for the district court to reference appellant’s receipt of a downward dispositional departure under circumstances similar to those presented here. Moreover, the law is clear and unambiguous that first-degree possession of a controlled substance includes possession of 7.5 ounces of water in a bong which consists of a mixture containing methamphetamine. See Minn. Stat. § 152.021, subd. 2(b). Appellant pleaded guilty to violating this law, received a downward dispositional departure, and then violated the terms of her probation. Although appellant may feel that the law is unfair, it was not improper for the district court to rely on the circumstances of the case when deciding to revoke her probation.

In sum, the district court made the requisite findings established in *Austin*, and balanced the considerations set forth in *Modtland*. After balancing the *Modtland* subfactors, the district court found that need for confinement outweighed the policies favoring probation. The district court’s findings are supported by the record. Accordingly, the district court did not abuse its discretion in revoking appellant’s probation.

**Affirmed.**