

*This opinion is nonprecedential except as provided by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
A24-0616**

State of Minnesota,
Respondent,

vs.

Shane Micheal Toivola,
Appellant.

**Filed December 23, 2024
Affirmed
Smith, Tracy M., Judge**

Goodhue County District Court
File No. 25-CR-23-549

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

Stephen F. O’Keefe, Goodhue County Attorney, Erin L. Kuester, Assistant County Attorney, Red Wing, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Max B. Kittel, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Harris, Presiding Judge; Larkin, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant Shane Micheal Toivola¹ challenges the revocation of his probation and execution of his sentence, arguing that the district court abused its discretion by (1) revoking probation before he had the opportunity to engage in rehabilitative programming and (2) going against logic and the facts in the record to determine that the need for confinement outweighed the policies favoring probation. We affirm.

FACTS

On March 23, 2023, Toivola was charged with three counts of first-degree criminal sexual conduct and three counts of second-degree criminal sexual conduct. On November 15, 2023, pursuant to a plea agreement, Toivola entered a plea of guilty to one count of first-degree criminal sexual conduct, in violation of Minnesota Statutes section 609.342, subdivision 1a(g) (2022). At a hearing on that date, Toivola admitted that on multiple occasions between October 2022 and February 2023 he sexually penetrated a ten-year-old girl vaginally and orally. Toivola was 21 years old at the time of those incidents. The district court accepted his plea.

On December 15, 2023, the district court sentenced Toivola to a presumptive 172 months in prison and granted him an agreed-upon downward dispositional departure, staying his sentence and imposing 30 years of probation. At the sentencing hearing, the

¹ The spelling of Appellant's middle name varies between "Micheal" and "Michael" at different points in the record. Because the warrant of commitment and appellant's notice of appeal list his middle name as "Micheal," we use that spelling.

district court reviewed the conditions of probation and asked Toivola to confirm that he understood them. Toivola confirmed that he did. Relevant conditions of Toivola's probation included (1) no contact with female individuals under age 18, apart from his sister or anyone preapproved by his probation agent; (2) no use or possession of internet-capable devices without probation-agent approval; and (3) no accessing social media, including the platform Snapchat. Toivola was released from custody on the day of his sentencing, after having served 267 days in jail.

At the time of his release, Toivola was scheduled to begin sex-offender treatment in January 2024. On December 22, 2023, Toivola met with his probation agent for an intake appointment. During the intake, the agent and Toivola reviewed his probation conditions, including the limitations on his contact with female minors, use of internet-capable devices, and social-media access. According to the agent, Toivola did not appear confused by the conditions and "seemed quite motivated to stay compliant" with his probation conditions.

Five days later, on December 27, using his younger sister's cell phone and Snapchat account, Toivola sent a 14-year-old girl a photo of himself exhaling smoke out of his mouth. The 14-year-old girl was a friend of Toivola's sister, who regularly exchanged Snapchat messages with the girl. The girl responded to the message by asking who was in the photo. Toivola responded, identifying himself as his sister's brother. Toivola and the girl also exchanged several more photos that day; the girl sent "a few" photos of her face, and Toivola sent her photos of his face and a car speedometer.

The girl's mother learned of the messages and made a complaint to the Red Wing Police Department, reporting that her daughter had received messages from Toivola

through his sister's Snapchat account, including a photo that appeared to be a selfie of "Toivola with a mouthful of vape smoke." The mother provided the police with a screenshot of the image.

On January 3, 2024, the state filed a probation-violation report, alleging that Toivola violated his probation conditions by (1) having contact with a female under age 18 without agent approval, (2) using an internet-capable device without agent approval, and (3) using the social-media application Snapchat.

The district court held a contested revocation hearing on the matter between January 10 and 16, 2024. The girl who had received the Snapchat photos of Toivola testified about receiving the messages and her cooperation with police investigation of the incident. The girl's mother testified regarding her report to the police. The girl's mother explained that she had heard of Toivola, that she recognized his picture from the Snapchat message because she had seen his jail-roster photo in print in the news, and that she knew that he was not supposed to have contact with minor females or use social media. Toivola's probation agent testified regarding her intake meeting with him and that she believed it was especially "risky" for a sex-offense probationer like Toivola to use a social-media platform like Snapchat.

The district court found that, as alleged in the probation-violation report, Toivola violated the conditions of his probation and that those violations were intentional and inexcusable. The district court also found "that the need for confinement outweigh[ed] the policies favoring probation." The district court revoked Toivola's probation and executed his sentence.

Toivola appeals.

DECISION

A district court may revoke probation when a probationer violates a condition of probation. Minn. Stat. § 609.14, subd. 1 (2022); Minn. R. Crim. P. 27.04, subd. 3(2)(b). To revoke probation, a district court must find that (1) the individual violated a specific probation condition, (2) “the violation was intentional or inexcusable,” and (3) the “need for [the individual’s] confinement outweighs the policies favoring probation.” *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). These findings, commonly referred to as the *Austin* findings, are not simply procedural requirements; “rather, courts must seek to convey their substantive reasons for revocation and the evidence relied upon” when making these three findings. *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005). 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 . . . cannot be counted on to avoid antisocial activity.” *Austin*, 295 N.W.2d at 251 (quotation omitted). “The purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed.” *Id.* at 250.

We review the district court’s decision to revoke probation for an abuse of 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.” *State v. Currin*, 974 N.W.2d 567, 571 (Minn. 2022) (quotation omitted).

Toivola challenges the district court’s findings with respect to only the third *Austin* factor—that the need for confinement outweighs the policies favoring probation. First, he

contends that, in making that finding, the district court made a legal error in determining that rehabilitation had failed. Second, Toivola contends that the district court's finding on the third factor goes against logic and the facts in the record. We address each argument in turn.

A. The district court did not make a legal error regarding rehabilitation.

Toivola argues that the district court made a legal error in determining that rehabilitation had failed. Toivola highlights that caselaw has long held that “[t]he purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed.” *Austin*, 295 N.W.2d at 250. He asserts that this caselaw requirement has been strengthened by recent legislation. In 2023, the Minnesota Legislature amended Minnesota Statutes section 609.14, subdivision 1(a), to add the following language: “Revocation shall only be used as a last resort when rehabilitation has failed.” 2023 Minn. Laws ch. 52, art. 17, § 32, at 1114. Toivola argues that this language means that the district courts must first allow rehabilitation to “play out in the community” before revoking probation and executing probationers’ sentences. Toivola contends that, because he did not have time to start sex-offender programming before his probation was revoked, the district court erred by determining that rehabilitation had failed.

The argument is unpersuasive. While the statutory amendment codifies long-standing caselaw, we are not persuaded that it creates a different or heightened standard that defines “rehabilitation” as programming and prohibits revocation when a probationer violates their conditions before court-ordered programming has begun. Moreover, the legislature has not expressly defined the term “rehabilitation” for purposes

of Minnesota Statutes section 609.14, and Toivola has identified no Minnesota caselaw that defines “rehabilitation” as only treatment or that precludes probation revocation before treatment has started.

At the contested revocation hearing, the district court responded to Toivola’s argument on this point as follows:

[A]s I understand the argument is rehabilitation is when you start treatment. But, rehabilitation started when you were sentenced, Mr. Toivola. Rehabilitation started on the date of your sentence. Rehabilitation continued when you met with [your probation agent], and . . . going forward here. So, rehabilitation has failed, even though . . . taking a snap shot of the time one would look from the outside in that this is relatively soon but a lot happened in that short period of time, Mr. Toivola.

A week after his sentencing, Toivola attended a probation-intake meeting, during which he received an in-depth explanation of his probation conditions and guidance on obtaining treatment. Five days later, Toivola violated three probation conditions. The district court reasonably applied the term “rehabilitation” to include the period between sentencing and the violations, including Toivola’s meeting with his probation agent, who provided him with clear instruction on the terms of his probation. While the brief nature of Toivola’s release into the community limited his opportunity to engage in rehabilitative programming, the district court did not erroneously view the law regarding rehabilitation. We therefore conclude that the district court did not abuse its discretion by revoking Toivola’s probation before he was able to engage in sex-offender treatment or other programming.

B. The district court’s decision was not against logic and the facts in the record.

Toivola argues that the district court abused its discretion because its determination on the third *Austin* factor is not supported by the facts in the record and goes against logic.

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 this factor, the district court considers what are commonly called the *Modtland* subfactors: 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.” *Modtland*, 695 N.W.2d at 607 (quotation omitted); e.g., *State v. Smith*, 994 N.W.2d 317, 320 (Minn. App. 2023) (referring to these as the “*Modtland* subfactors”), *rev. denied* (Minn. Sept. 27, 2023). A district court must find at least one of these three subfactors to support revocation. *Smith*, 994 N.W.2d at 320 (“Only one *Modtland* subfactor is necessary to support revocation.”).

The district court determined that all three *Modtland* subfactors were satisfied. Toivola argues that the district court’s decisions with respect to all the subfactors were contrary to logic and the facts in the record. As explained below, we conclude that the district court did not abuse its discretion in finding that the first *Modtland* subfactor was present. We therefore begin and end our analysis with that subfactor. *See id.*

Toivola argues that his act of using Snapchat to send a photo of his face to a minor female did not support the district court's determination that confinement was necessary to protect the public from further criminal activity. He seems to suggest that the conditions that he violated—restrictions on his use of social media and internet-capable devices—were not closely related to preventing reoffense because his underlying crime did not involve grooming via social media—rather, the victim lived in the same household. He also emphasizes his social-media activity was not sexual in nature and that there were no allegations of new criminal activity. He disputes that, as argued by the state, his conduct was part of his offense cycle. His argument is unconvincing.

At the hearing, the district court explained its revocation decision as follows:

If one takes a snapshot of this case as of December 27th of 2023 [the date of the violations], one might not think it would be appropriate to revoke Mr. Toivola's probation. But, the case law, the statute, and the like, does allow me to go back further than that, and take into account the sentence that was imposed upon Mr. Toivola by myself back on December 15th. . . .

. . . [N]o use of cell phone and [no] use of Snapchat . . . were necessary conditions given Mr. Toivola's history of submitting and using [an] internet-based device to submit and transmit a picture of him victimizing the victim here in a sexual manner and sending that picture on.

Now, when I sentenced Mr. Toivola I found that he was amenable to probation. . . . [T]he psycho-sexual evaluation . . . identified Mr. Toivola as a moderate risk for reoffending. . . . Now, when I look at the nature of the violations here, one thing that's not been discussed by counsel, but something I think is important to look at, is the other victim now that's involved here through no fault of her own and that's the 16-year old sister, not being sexualized by any means but being manipulated, manipulated in such a fashion for him to get access to her cell phone. That manipulation . . . is a concern

given that that manipulation happened five days after [he was] told by [the probation agent] to not have . . . access to phones that weren't anything but [his] dad's phone and for . . . limited purposes. . . . [He was] using that phone then to send a Snapchat, not just one Snapchat but at least two that I'm aware of The first was the hello with a photograph of [himself], and when the recipient of that, the child received that and did not recognize who it was [he] responded to her inquiry.

. . . So, rehabilitation has failed

As a result, focusing on the third part of the *Austin* factors, the need for confinement outweighs the policies favoring probation. I don't do this lightly and I want you to know that, Mr. Toivola, that I've weighed everything and I've looked at everything here and weighing everything including what you did post sentence, what you did leading up to the sentence as far as why those conditions were put in place and were necessary, I do find that confinement is hereby necessary to protect the public from your further criminal activity.

The district court's determination is not contrary to logic or the facts in the record. The pre-plea psychosexual report found that Toivola presented a moderate risk of reoffending. And, even if social media did not play a significant role in his underlying crime, the probation conditions that Toivola violated were certainly directed against preventing future criminal sexual conduct against a minor. Toivola received clear instruction regarding those conditions and intentionally violated them when he used his sister's phone to send a photo of himself to a 14-year-old girl and engage in communication with her. Toivola's risk of reoffending and his violation of conditions that were directed at preventing him from doing so against a minor in the future support the district court's finding that confinement was necessary to protect the public from further criminal activity even if Toivola was not alleged to have engaged in new criminal activity.

Because the district court did not abuse its discretion by finding that confinement is necessary to protect the public from further criminal activity by Toivola, the third *Austin* factor was satisfied and the district court acted within its discretion in revoking Toivola's probation.

Affirmed.