

*This opinion is nonprecedential except as provided by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
A24-0633**

State of Minnesota,
Respondent,

vs.

Charles Alvin Weber,
Appellant.

**Filed December 30, 2024
Affirmed
Bratvold, Judge**

Crow Wing County District Court
File Nos. 18-CR-18-13, 18-CR-18-434, 18-CR-18-4550

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

Donald F. Ryan, Crow Wing County Attorney, Candace Prigge, Assistant County Attorney, Brainerd, Minnesota (for respondent)

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

Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant challenges a district court order revoking his probation. Appellant argues that the district court erred in determining that the need for his confinement outweighs the

policies favoring probation. Because the district court did not abuse its discretion by revoking appellant's probation, we affirm.

FACTS

In 2018, respondent State of Minnesota charged appellant Charles Alvin Weber with having committed a series of burglaries in Crow Wing County. In total, the state filed three criminal complaints against Weber, with nine charges involving events in 2017.¹

In March 2019, Weber agreed to plead guilty to one count of first-degree burglary and three counts of second-degree burglary to resolve the charges in all three criminal files. In exchange, the state agreed to dismiss all other charges and recommend a downward dispositional departure at sentencing. After Weber entered his guilty pleas, the district court accepted the pleas and sentenced Weber according to the plea agreement. The district court determined that a downward dispositional departure was appropriate because Weber was amenable to treatment, showed remorse, and accepted responsibility for his offenses.

For the first-degree burglary conviction, the district court imposed a 120-month sentence and stayed execution on specific conditions supervised by probation. The district court also imposed concurrent 36-month sentences for the three second-degree burglary convictions and stayed execution with supervision by probation.² The district court

¹ Relevant to the issues in this appeal, the three complaints included one count of first-degree burglary under Minn. Stat. § 609.582, subd. 1(b) (2016); seven counts of second-degree burglary under Minn. Stat. § 609.582, subd. 2(a)(4) (2016); and one count of unlawful possession of a firearm under Minn. Stat. § 624.713, subd. 1(2) (2016).

²As was later noted at Weber's revocation hearing, all three of Weber's sentences were stayed for five years under a retroactive amendment of the probation statute. *See* Minn. Stat. § 609.135, subd. 2(a) (Supp. 2023); 2023 Minn. Laws ch. 52, art. 6, § 14, at 924.

outlined the conditions for the stayed sentences, which included that Weber complete chemical-dependency treatment, follow all chemical-dependency program recommendations, and not use or possess any controlled substances, intoxicants, or alcohol except with a valid prescription.

Two years later, in April 2021, Crow Wing County Community Corrections (probation) filed a probation-violation report, alleging that Weber tested positive for controlled substances twice in March 2021 and that Weber failed to report for drug testing once in April 2021. In May 2021, probation filed an addendum to the report, alleging that Weber tested positive for controlled substances twice in April 2021 and admitted to using a controlled substance that month. In August 2021, the district court held a probation-violation hearing at which Weber admitted to the violations alleged in the report and addendum. The district court reinstated Weber's probation with the added conditions that he complete aftercare programming and attend sober support meetings.

In February 2022, probation filed a second probation-violation report, alleging that Weber failed to report for drug testing five times between November 2021 and February 2022 and did not provide confirmation that he attended sober support meetings. In March 2022, probation filed its first addendum to the report, alleging that Weber tested positive for controlled substances twice that month. In April 2022, probation filed its second addendum to the report, alleging that Weber tested positive for controlled substances two more times in March 2022 and that he failed to report for drug testing four times between March 2022 and April 2022. In August 2022, the district court held Weber's second probation-violation hearing. Weber admitted to the violations alleged in the second report

and addenda. The district court reinstated Weber's probation with the added conditions that he complete the Alternatives to Incarceration (ATI) program and continue all current treatment programs and aftercare recommendations.

Four years later, in June 2023, with probation scheduled to expire in 2024, probation filed a third probation-violation report, alleging that Weber tested positive for controlled substances in June 2023 and admitted to using drugs. In the third report, probation recommended that Weber attend the Crow Wing County Drug Court Program (drug court) or that the district court execute his 120-month sentence. In September 2023, probation filed its first addendum to the report, alleging that Weber tested positive for controlled substances in August 2023. Weber claimed the August hair-follicle test was incorrect and obtained a private hair-follicle test in September 2023, which was also positive for controlled substances. In December 2023, probation filed its second addendum to the report, alleging that Weber tested positive for controlled substances that month and admitted to using drugs.

On January 11, 2024, the district court held a contested probation-violation hearing. The state called Weber's probation agent, who testified about Weber's positive drug tests in June, September, and December 2023. The probation agent testified that Weber had shaved his head and dyed his hair to evade the August 2023 hair-follicle test. The district court received into evidence Weber's drug-test reports and signed admission-of-use statement from June 2023. After a cross-examination by Weber's attorney, the district court found that the state had proved by clear and convincing evidence that Weber used

controlled substances in June 2023, twice in August 2023, and in December 2023. The district court found that Weber violated probation.

The state then recalled the probation agent, who testified about Weber's programming, including mental-health therapy, the ATI program, church involvement, and other programs in the community. She testified that she believed probation had offered Weber "everything [they had] available." When questioned by Weber's attorney about drug court, the probation agent testified that Weber ultimately "was not accepted into drug court because of his first-degree burglary [conviction]." ³

The parties then argued the appropriate disposition of Weber's violations. The prosecuting attorney asked the district court to revoke probation and execute all four of Weber's sentences. At first, Weber's attorney appeared to suggest that the district court should reinstate probation. But Weber's attorney acknowledged that the violations warranted a sanction and asked the district court to execute the 36-month sentences and leave the stayed 120-month sentence as a "stark reminder" to deter future violations.

The district court took the case under advisement. On January 18, 2024, the district court repeated its earlier finding that the state proved by clear and convincing evidence that Weber violated the no-use condition four times. The district court then found that these violations were inexcusable and that the need for Weber's confinement outweighed the policies favoring continued probation. The district court revoked the stay of execution and committed Weber to 120 months in prison.

³ The state also called Weber's child-protection caseworker, who testified that Weber received additional chemical-dependency services as part of his case plan.

Weber appeals.

DECISION

Weber challenges the revocation of his probation, arguing that the district court abused its discretion because the policies favoring probation are not outweighed by the need for confinement.

If the district court finds that an individual violated probation or the individual admits a probation violation, the district court may “continue an existing stay of execution and order probation” or revoke probation and execute a sentence. Minn. R. Crim. P. 27.04, subd. 3(2)(b). 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); *see State v. Losh*, 694 N.W.2d 98, 102 (Minn. App. 2005) (affirming the district court’s revocation decision for a single drug-use violation), *aff’d*, 721 N.W.2d 886 (Minn. 2006). “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. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

Before revoking probation, a district court must “consider and make specific determinations on the three *Austin* factors.” *State v. Smith*, 994 N.W.2d 317, 320 (Minn. App. 2023), *rev. denied* (Minn. Sept. 27, 2023). *Austin* requires that the district court address three factors: (1) “designate the specific condition or conditions that were violated”; (2) “find that the violation was intentional or inexcusable”; and (3) “find that need for confinement outweighs the policies favoring probation.” 295 N.W.2d at 250

(*Austin* factors). “The decision to revoke cannot be a reflexive reaction to an accumulation of technical violations but requires a showing that the offender’s behavior demonstrates that [they] cannot be counted on to avoid antisocial activity.” *Id.* at 251 (quotations omitted). A district court should not merely recite the three *Austin* factors and offer “general, non-specific reasons for revocation, as it is not the role of appellate courts to scour the record to determine if sufficient evidence exists to support the district court’s revocation.” *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005). Appellate courts review de novo whether a district court “made the findings required under *Austin*.” *Id.* at 605.

On appeal, Weber challenges only the third *Austin* factor: whether the need for confinement outweighs the policies favoring probation. When analyzing the third *Austin* factor, the district court “must bear in mind that policy considerations may require that probation not be revoked even though the facts may allow it and 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). The district court must also “balance the probationer’s interest in freedom and the state’s interest in [ensuring] his rehabilitation and the public safety, and base their decisions on sound judgment and not just their will.” *Id.* at 606-07 (quotation omitted). In doing so, a district court must consider three subfactors within the third *Austin* factor to determine whether, based on the original offense and the intervening conduct of the offender,

- (i) confinement is necessary to protect the public from further criminal activity by the offender; or

- (ii) the offender is in need of correctional treatment which can most effectively be provided if he is confined; or
- (iii) it would unduly depreciate the seriousness of the violation if probation were not revoked.

Id. at 607 (*Modtland* subfactors).

Weber argues that the district court’s reasoning under each *Modtland* subfactor “either misstated the facts or omitted them altogether.” To affirm, we need conclude that record evidence supports one *Modtland* subfactor. *Smith*, 994 N.W.2d at 320 (“Only one *Modtland* subfactor is necessary to support revocation.”). Because we conclude that the second and third *Modtland* subfactors support revocation, we need not address the first subfactor in our analysis.

A. The district court did not abuse its discretion when it determined that Weber needs correctional treatment that can most effectively be provided in confinement.

Weber argues that the district court’s analysis of the second *Modtland* subfactor “lacks logic and fails to make any fact specific finding.” Weber contends that more treatment options exist outside prison than inside prison and that he “always complied with [community] treatment and maintained his sobriety in programming.” He notes that a chemical-use assessment recommended residential treatment in 2022 but asserts that he was never ordered to enter.⁴ Weber also contends that “ample evidence” supports his

⁴ The first addendum to the third violation report notes that Weber received one month of inpatient treatment during his probation.

eligibility for community-based services, including the successful completion of every program he was directed to enter and his “lengthy period[s] of sobriety.”⁵

The district court found that “[it] has also been shown that there just is not correctional treatment outside of commitment that can effective[ly] address [Weber’s] use of intoxicants, therefore it’s been proved by clear and convincing evidence that he is in need of correctional treatment which can most effectively be provided if confined.”

Weber is correct that the district court did not make a specific finding on the availability of treatment programs in the community. A district court must make specific findings on each *Austin* factor, not merely recite general reasons for revocation. *Modtland*, 695 N.W.2d at 608. This rule applies even if there is sufficient evidence in the record supporting the district court’s findings. *Id.* at 606. The district court found that Weber needs in-custody treatment because he repeatedly used drugs during and after participating in and graduating from several community treatment programs. While Weber is correct that he was *not* ordered into residential treatment in 2023, Weber received residential treatment at the beginning of his probationary period. In discussing its revocation decision, the district court expressly stated that “very clearly an important condition of the probation was that Mr. Weber not use or possess illegal intoxicants.”

⁵ Weber also argues that he could not access drug court because of “his unlawful and erroneous conviction for first-degree burglary.” Weber’s brief to this court repeatedly refers to his “erroneous” conviction for first-degree burglary. This issue is outside the scope of this appeal. In June 2024, Weber moved to stay his appeal to pursue postconviction proceedings, alleging that he was wrongfully convicted of first-degree burglary. A special term panel of this court denied the motion to stay and concluded that whether Weber was lawfully convicted of first-degree burglary is beyond the scope of this appeal.

The district court considered Weber's history of treatment and relapse throughout the probationary period. The district court found that Weber had violated probation by using drugs in April and May 2021 and that "less than two months after resolving" those violations, Weber was using drugs again. Despite a second probation-violation report and concerns about Weber's continued drug use and missed drug tests, probation urged reinstatement with the added condition that Weber complete the ATI program. But Weber repeatedly tested positive for controlled substances after graduating from the ATI program. The district court found that, even after a third probation-violation report, probation showed "a willingness to work on emotional issues in a way to help [Weber] stay away from unhealthy peers" and briefly explored drug court, but Weber was not accepted. Based on this history, the district court also found that Weber was not amenable to community-based treatment.

Weber's brief to this court urges that he should be reinstated to probation and that this court should reverse the revocation decision. This appears to be a new argument on appeal. Generally, appellate courts will not consider matters not argued to and considered by the district court. *Steward v. State*, 950 N.W.2d 750, 756 (Minn. 2020) (quoting *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988)). While arguing disposition at the probation-revocation hearing, Weber's attorney asked the district court to revoke Weber's 36-month sentences and leave the 120-month stayed sentence in place. Even if we were to consider Weber's argument for reinstatement to probation, we would conclude that the district court did not abuse its discretion. The record evidence shows that Weber received many treatment opportunities in the community, including a one-month stay in a residential

program. Despite these opportunities and his graduation from several programs, Weber repeatedly used controlled substances.

We thus conclude that the district court did not abuse its discretion in finding that Weber needs correctional treatment that can most effectively be provided in confinement.

B. The district court did not abuse its discretion when it determined that it would unduly depreciate the seriousness of Weber’s violations if probation were not revoked.

Weber contends that the reinstatement of his probation “after isolated instances of use” would not contravene the third *Modiland* subfactor. He argues that an intermediate sanction, namely long-term residential treatment, “would have been a strong and rational response to Weber’s relapse.” Weber urges that executing his 120-month sentence for a relapse that occurred four months before his probation expired was “a drastic and reflexive overreaction” by the district court.

In deciding whether revocation is appropriate, the district court may consider the “original offense and the *intervening conduct* of the offender.” *State v. Fortner*, 989 N.W.2d 368, 375 (Minn. App. 2023) (emphasis added). The district court found that Weber violated probation by using drugs many times before the drug use alleged in the third violation report and proved at the revocation hearing. Although Weber experienced some success with sobriety after community treatment, he repeatedly used controlled substances and, after the third violation report, refused to admit use, tried to evade testing, and covered up his drug use. Even looking at the period before his third report, the district court found that “the pattern going into 2023 is that Mr. Weber uses. He denies or hides it and then only admits it when he gets backed into a corner.”

Based on this record, we conclude that the district court did not abuse its discretion when it rejected Weber's argument that these violations were "isolated instances of use." In its oral decision, the district court explained, "[T]his being the third formal probation violation on a downward departure with several addendum reports, it would [depreciate] unduly the seriousness of these violations if probation was not revoked." We discern no abuse of discretion.

In sum, record evidence and the district court's findings reasonably support the district court's determination that (1) Weber needs correctional treatment that can most effectively be provided if he is confined and (2) it would unduly depreciate the seriousness of Weber's violations if probation were not revoked. Thus, the district court did not abuse its discretion in revoking Weber's probation.

Affirmed.