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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1004**

State of Minnesota,
Respondent,

vs.

Churojut Peter Thuok,
Appellant.

**Filed January 13, 2025
Affirmed
Schmidt, Judge**

Stearns County District Court
File No. 73-CR-21-5125

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

Janelle P. Kendall, Stearns County Attorney, River D. Thelen, Assistant County Attorney,
St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrew J. Nelson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Smith, Tracy M., Judge; and
Schmidt, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

In this appeal from an order revoking probation and executing a 41-month sentence,
appellant Churojut Peter Thuok argues that the district court abused its discretion because
the evidence did not support a finding that the need for confinement outweighed the

policies favoring probation and that the court should have, instead, imposed an intermediate sanction. Because the district court did not abuse its discretion, we affirm.

FACTS

In 2021, respondent State of Minnesota charged Thuok with first-degree burglary. Thuok pleaded guilty, which included as part of an agreement a dispositional departure sentence based on his amenability to probation. The district court sentenced Thuok to 41 months in prison but stayed execution of his sentence for five years during which time Thuok would be on probation. As a condition of his probation, the district court required Thuok to abstain from mood-altering chemicals, remain law abiding, contact his probation officer as directed, complete a substance-use-disorder assessment, and comply with random testing. The court also required Thuok to complete the Stearns County Enhanced Supervision Program, which imposed a curfew and required Thuok “to be employed or participate in positive weekly activity for a minimum of 24 [hours per week.]”

Thirteen days after sentencing, Thuok received his first probation-violation report for having a positive drug test and for failing to comply with the Enhanced Supervision Program’s contact requirements. The district court held a hearing, Thuok admitted to the violations, and the court ordered him to spend 15 days in jail as an intermediate sanction.

Three months later, Thuok received his second probation-violation report for testing positive for alcohol on two different occasions and for failing to timely complete, or to verify that he completed, his substance-use-disorder assessment. The district court held another hearing, Thuok admitted to the violations, and the court ordered him to spend 30 days in jail as an intermediate sanction.

Three months later, Thuok received his third probation-violation report for testing positive for alcohol. At another hearing, Thuok again admitted to the violation and the court ordered him to spend another 30 days in jail as an intermediate sanction.

Two months later, Thuok received his fourth probation-violation report for testing positive for alcohol, failing to report for random testing, failing to call the testing hotline seven times, violating curfew, failing to be employed or have positive activities at least 24 hours per week, and failing to remain law abiding. Thuok admitted to the violations. The district court held a hearing at which the state requested that the court revoke Thuok's probation. Defense counsel requested that the court impose an intermediate sanction of 120 days in jail followed by high-intensity outpatient treatment. The district court revoked Thuok's probation and executed his 41-month sentence, with credit for time served during his intermediate sanctions.

Thuok appeals.

DECISION

Thuok argues that the district court abused its discretion when it revoked his probation because the need for confinement did not outweigh policies favoring probation and an intermediate sanction should have been imposed instead of revocation. The district court has broad discretion in its decision to revoke probation, which will only be reversed "if there is a clear abuse of that discretion." *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). Whether the district court made the findings required to revoke probation is a question of law, which we review de novo. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

If grounds for revocation exist, a district court may execute a previously imposed but stayed sentence. Minn. Stat. § 609.14, subd. 3(2) (2022). Before probation is revoked, a district court must “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.” *Austin*, 295 N.W.2d at 250. When looking at the third *Austin* factor, the district court should consider whether at least one of the following subfactors is present:

(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 251. Revocation “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.” *Id.* (quotations omitted).

The parties on appeal do not dispute that the district court properly designated the specific conditions that were violated or that the court properly found that Thuok’s violations were intentional or inexcusable. Thus, the first two *Austin* factors are satisfied. *Id.* at 250. Thuok only challenges the district court’s decision on the third *Austin* factor. In ruling that the need for confinement outweighed the policies favoring probation, the district court made findings on two subfactors: (1) that correctional treatment can best be offered if Thuok was confined to the Minnesota Department of Corrections, and (2) the seriousness of Thuok’s violations would be unduly depreciated if probation were not revoked. Thuok challenges each of these findings on appeal.

A. The district court did not abuse its discretion in determining Thuok needed correctional treatment that could most effectively be provided if confined.

Thuok argues that treatment in prison was not the only option available. But the district court found that Thuok failed to receive treatment in the community. The court's finding was not clearly erroneous because the record established that Thuok's violations involved a failure to abstain from mood-altering substances, Thuok's missed tests, and Thuok's failure to complete his substance abuse disorder assessment until he was confined.

Thuok argues that the district court must find that treatment in prison is the only, or the best, option available. But Thuok's cited case, *State v. Fleming*, is distinguishable. 869 N.W.2d 319 (Minn. App. 2015), *aff'd*, 883 N.W.2d 790 (Minn. 2016). In *Fleming*, this court affirmed a decision to revoke probation after the district court found that a defendant was not amenable to probation because he nearly exhausted all "relevant programming opportunities[.]" *Id.* at 325. Although this was a relevant consideration in that case, *Fleming* did not announce a rule of law that exhaustion of community programming is required for all cases. *Id.* at 331-32. In contrast, the supreme court has affirmed a decision to revoke probation where, like here, the defendant had "been offered treatment but has failed to take advantage of the opportunity or to show a commitment to rehabilitation[.]" *Austin*, 295 N.W.2d at 251.

The district court had also tried intermediate sanctions for Thuok's three prior violations, but they did not change his behavior. Instead, Thuok continued to violate the conditions of his probation. The district court did not abuse its discretion in determining that correctional treatment would best be provided to Thuok while confined.

B. The district court did not abuse its discretion in determining the seriousness of the violation would be unduly depreciated if probation was not revoked.

The district court determined that it would unduly depreciate the seriousness of Thuok's violation if probation was not revoked. Thuok's original offense—first-degree burglary—is a serious crime and “[l]ess judicial tolerance is urged for offenders who were convicted of a more severe offense[.]” Minn. Sent’g Guidelines 3.B (2020). Nonetheless, the district court dispositionally departed downward by imposing a probationary sentence. Whether the original sentence was a downward dispositional departure is “a proper consideration” for a probation revocation. *Fleming*, 869 N.W.2d at 331.

The district court gave Thuok multiple opportunities to remedy his behavior by imposing intermediate sanctions, but he continued to violate the conditions of his probation. Based on the severity of the initial offense and the numerous violations within a year of his probation starting, the district court did not abuse its discretion in determining that it would unduly depreciate the seriousness of Thuok's violations if the court did not revoke probation.

C. The district court did not abuse its discretion by not imposing another intermediate sanction.

Thuok contends the district court should have imposed an intermediate sanction rather than revoke his probation. Although the district court believed Thuok was sincere at his probation revocation hearing, it noted that this was the fourth time that Thuok asked for another chance. The court rejected imposing another intermediate sanction because the prior sanctions had no impact on Thuok's compliance.

Thuok argues that the Minnesota Supreme Court has held that intermediate sanctions are appropriate after a violation, “at least in part, because rehabilitation is still possible.” *State v. Cottew*, 746 N.W.2d 632, 637 (Minn. 2008). But the supreme court has not held that rehabilitation being possible is the only consideration. *Id.* Here, the district court appropriately made findings on why it revoked Thuok’s probation and executed the previously imposed sentence, and the court clearly explained why imposing an intermediate sanction was not appropriate. The district court did not abuse its discretion by not imposing another intermediate sanctions and executing the previously stayed sentence.

Affirmed.