

*This opinion is nonprecedential except as provided by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
A24-1693**

State of Minnesota,
Respondent,

vs.

Dustin Eugene Clapp,
Appellant.

**Filed July 14, 2025
Affirmed
Wheelock, Judge**

Lyon County District Court
File No. 42-CR-23-841

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

Abby Wikelius, Lyon County Attorney, Julianna F. Passe, Assistant County Attorney,
Marshall, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Patrick Monnens, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Wheelock,
Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant challenges the revocation of his probation, arguing that the district court abused its discretion by failing to make adequate findings pursuant to the third *Austin* factor. We affirm.

FACTS

The following facts summarize the record, including the sentencing and probation-revocation proceedings. During a routine traffic stop in August 2023, law enforcement found appellant Dustin Eugene Clapp driving with a cancelled license and in possession of over 50 grams of methamphetamine. Respondent State of Minnesota ultimately charged Clapp with first-degree possession of 50 or more grams of methamphetamine in violation of Minn. Stat. § 152.021, subd. 2(a)(1) (Supp. 2023), third-degree sale of 17 grams or more of methamphetamine in violation of Minn. Stat. § 152.023, subd. 1(1) (Supp. 2023), and driving after the cancellation of his license in violation of Minn. Stat. § 171.24, subd. 5 (2022). Clapp pleaded guilty to third-degree sale of methamphetamine and driving after cancellation of his license in an *Alford* plea, and the state dismissed the first-degree possession charge.¹

The district court imposed a 33-month sentence but stayed the execution of the sentence and directed Clapp to “complete and pay for a substance use disorder assessment or a comprehensive assessment, whichever is directed by probation, . . . and follow all clinical recommendations of that assessment.” The district court further ordered that Clapp submit to random alcohol or drug testing; not use or possess alcohol or drugs, except as

¹ In *State v. Goulette*, 258 N.W.2d 758, 760 (Minn. 1977), the State of Minnesota formally adopted the use of pleas entered in accordance with *North Carolina v. Alford*, 400 U.S. 25 (1970). See *Doe 136 v. Liebsch*, 872 N.W.2d 875, 879 (Minn. 2015) (discussing the formal adoption of *Alford* pleas). In *Alford*, the United States Supreme Court held that it was constitutional for a court to accept a defendant’s guilty plea, even though the defendant maintained his innocence, when the state demonstrated a “strong factual basis for the plea” and the defendant clearly expressed his desire to enter the plea based on his belief that the state’s evidence would be sufficient to convict him. 400 U.S. at 38.

prescribed; and inform probation within seventy-two hours if he changed his address or telephone number. When the district court asked Clapp if he would like to tell the court anything, Clapp said that “treatment is something [he’s] considering.” The district court then released Clapp on probation.

On April 4, 2024, Clapp visited the probation office for the only time. Clapp failed to maintain contact with probation after April 4, notwithstanding that probation attempted to contact Clapp numerous times via letter, phone, and text. Because probation could not contact Clapp, it was unable to randomly test him for alcohol and drugs. Therefore, probation alleged the following violations: (1) failing to maintain contact with probation, (2) failing to notify probation of an address change, and (3) failing to submit to random drug or alcohol testing. Based on the alleged violations, the district court issued a warrant in June for Clapp’s arrest. After Clapp turned himself in on the warrant, he submitted to a drug test and tested positive for methamphetamine. The district court held a contested probation-revocation hearing in July.

Although Clapp explained at the hearing that he used methamphetamine only when he realized a warrant was out for his arrest because of the stress the warrant caused him, he admitted that he violated the terms of his probation by failing to maintain contact with his probation officer, failing to submit to random drug testing, and failing to abstain from methamphetamine.²

² Probation withdrew the violation for failure to notify it of an address change.

During the hearing, the district court asked Clapp about his willingness to participate in treatment court. Clapp responded that, “with all the requirements that . . . come with it” and what “so many people have told” him about it, he was “willing to try” but did not “wanna fail.” He explained, “I don’t wanna go to prison at the same time, but I don’t want so much where I’m overbeared cause I tend to shut down really quick and I tend to . . . run away from it.”

The district court heard arguments from Clapp’s attorney in favor of continuing probation and from the state in favor of executing the sentence. The district court then revoked Clapp’s probation and executed the previously stayed sentence, stating:

I find that the violations are in—intentional or inexcusable. I am relying on—in making this finding, I am relying on the fact that the Defendant is familiar with how probation works and . . . the Defendant knew it was his responsibility to stay in contact with probation. . . . Defendant did not respond to the many attempted contacts through various forms including phone and mail and other electronic communication, . . . he did not respond to the many forms of contact by probation to . . . set up his appointments or to submit to testing as required. Additionally, when the Defendant found out about the warrant he chose to use methamphetamine. . . . I would note that there was no change of address or phone number. So, I find that the Defendant’s . . . choice was to ignore probation’s attempted contacts. I find that the need for confinement outweighs public policy favoring probation. Confinement is necessary to protect the public from further criminal activity and this is apparent due to the Defendant’s ongoing use of—of drugs. I find that the Defendant is in need of correctional treatment that can be best offered if confined. Um, the Defendant did have the opportunity to participate in treatment in the community . . . specifically through treatment court and chose not to do so and it would unduly depreciate the seriousness of the violation if probation were not revoked. This is a serious violation because . . . one of the very basic requirements of the privilege of being on probation is to submit to supervision and respond to

probation when they contact you. If you're not willing to do that then . . . you . . . no longer have the privilege of being on probation.

The district court made these findings from the bench and concluded that revoking Clapp's probation was necessary because the need for confinement outweighed policies favoring probation.

Clapp appeals.

DECISION

Clapp argues that the district court abused its discretion when it revoked his probation and found that the third *Austin* factor was met because it “only made general, non-specific findings which are insufficient under Minnesota caselaw, and treatment in the community had not been attempted, let alone exhausted.”

A district court may revoke probation if the probationer violates any condition of that probation. Minn. Stat. § 609.14, subd. 1(a) (Supp. 2023). “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). “The ultimate decision whether to order revocation and imprisonment lies solely within the district court's discretion.” *State v. Fortner*, 989 N.W.2d 368, 377 (Minn. App. 2023). “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). Even if another district court, in the proper exercise of its discretion, could have made a

different ruling on the same facts, that does not mean that the district court abused its discretion in the present matter. *State v. Blom*, 682 N.W.2d 578, 613 (Minn. 2004).

When deciding whether to revoke probation and order execution of a prison sentence, “the district court must independently determine whether revocation is appropriate.” *Fortner*, 989 N.W.2d at 370. A district court must make three findings before it may revoke a defendant’s probation following a violation. *Austin*, 295 N.W.2d at 250. “[T]he 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 [the] need for confinement outweighs the policies favoring probation.” *Id.*

The district court must make specific findings on all three *Austin* factors before it decides whether to revoke probation. *State v. Modtland*, 695 N.W.2d 602, 607-08 (Minn. 2005). A probation revocation cannot be “a reflexive reaction to an accumulation of technical violations,” and the district court must determine that the defendant “cannot be counted on to avoid antisocial activity.” *Austin*, 295 N.W.2d at 251 (quoting *United States v. Reed*, 573 F.2d 1020, 1024 (8th Cir. 1978)). This is a fact-specific analysis, and the district court must “create thorough, fact-specific records” to explain its reasons for revoking probation. *Modtland*, 695 N.W.2d at 608.

Clapp argues that the record does not support the district court’s determination on the third *Austin* factor because the district court “only made general, non-specific findings which are insufficient under Minnesota caselaw, and treatment in the community had not been attempted, let alone exhausted.” When analyzing the third *Austin* factor—“whether

the need for confinement outweighs the policies favoring probation,” 295 N.W.2d at 250—
district courts consider the *Modtland* factors:

- (i) [whether] confinement is necessary to protect the public from further criminal activity by the offender; or
- (ii) [whether] the offender is in need of correctional treatment which can most effectively be provided if he is confined; or
- (iii) [whether] it would unduly depreciate the seriousness of the violation if probation were not revoked.

Modtland, 695 N.W.2d at 607 (quotation omitted). A court need find the existence of only one *Modtland* factor to support the district court’s finding for the third *Austin* factor. *State v. Smith*, 994 N.W.2d 317, 320 (Minn. App. 2023), *rev. denied* (Minn. Sept. 27, 2023).

In its statements from the bench, the district court found that all three of the *Modtland* factors supported the finding on the third *Austin* factor and, ultimately, the revocation of Clapp’s probation. As to the first factor, the district court found that confinement was “necessary to protect the public from further criminal activity and this is apparent due to [Clapp’s] ongoing use of—of drugs.” As to the second factor, the district court found that Clapp “is in need of correctional treatment that can be best offered if confined” because Clapp had the opportunity to participate in community treatment and in treatment court but chose not to participate. And as to the third factor, the district court found that “it would unduly depreciate the seriousness of [Clapp’s] violation[s] if probation were not revoked.” Regarding the third *Modtland* factor, the district court reasoned that Clapp’s violations were serious because “one of the very basic requirements of the privilege of being on probation is to submit to supervision and respond to probation when they contact you. If you’re not willing to do that then . . . you . . . no longer have the

privilege of being on probation.” We determine that the district court’s findings on all three *Modtland* factors were sufficient and affirm. Even if the district court’s findings on the first and third factors were insufficient, we conclude that Clapp’s arguments on the second *Modtland* factor do not demonstrate that the district court’s finding there was inadequate.

In support of its determination on the second *Modtland* factor that Clapp is in need of correctional treatment that can most effectively be provided if he is confined, the district court stated that Clapp continued to use methamphetamine, had not made an effort to engage with probation, and did not express an affirmative willingness to participate in treatment court. When the district court asked Clapp about his willingness to be in treatment court, Clapp gave an evasive answer about liking the idea of it but being uncertain about its efficacy for him.

Clapp argues that he did not have an opportunity to complete treatment in the community because he last attempted treatment in 2022 and probation initially recommended that he complete an updated substance-use assessment. Clapp asserts in his brief that he “had already completed a substance use assessment which did not recommend any treatment.” Our review of the record confirms both of Clapp’s factual assertions: that he had recently completed a substance-use assessment that did not recommend participation in a treatment program and that probation recommended that he complete a

new substance-use assessment and follow its recommendations. At sentencing, the district court ordered Clapp to complete and pay for a substance-use assessment:

You shall complete and pay for a substance use disorder assessment or a comprehensive assessment, whichever is directed by probation within thirty days of today's date and follow all clinical recommendations of that assessment.

Clapp argues that, notwithstanding the district court's directives at sentencing, he "did not have to do treatment initially because his first assessment did not recommend any participation in treatment." We disagree. Clapp's argument concedes that probation recommended that he complete a new assessment, and it is undisputed that the district court ordered Clapp at sentencing to complete a new substance-use assessment and follow the resulting recommendations.

Clapp also argues that the court should follow two nonprecedential opinions requiring that district courts exhaust treatment options in the community before revoking probation: *State v. Stradtman*, No. A19-1322, 2020 WL 1845512, at *3-4 (Minn. App. Apr. 13, 2020), and *State v. Sayers*, No. A15-1345, 2016 WL 1619389, at *3 (Minn. App. Apr. 25, 2016). But these cases are not binding authority. Minn. R. Civ. App. P. 136.01(c) ("Nonprecedential opinions . . . are not binding authority.").

Finally, Clapp cites three nonprecedential opinions to argue that, when the district court merely recites the *Modtland* factors without articulating its reasoning, this court reverses the district court's decision revoking probation: *State v. Schwab*, No. A16-1371, 2017 WL 875260, at *3 (Minn. App. Mar. 6, 2017), *State v. Jones*, No. A14-2058, 2015 WL 4528943, at *4 (Minn. App. July 6, 2015), and *State v. Arango*, No. A14-0712,

2014 WL 7344285, at *2 (Minn. App. Dec. 29, 2014). As set forth above, nonprecedential opinions are not binding authority, and although they may be persuasive, we do not find the opinions cited here persuasive because they are distinguishable. *See* Minn. R. Civ. App. P. 136.01(c) (“Nonprecedential opinions . . . are not binding authority . . . but nonprecedential opinions may be cited as persuasive authority.”).

The district court here made express findings that were based on the record, identifying Clapp’s relevant behavior and related facts in a well-reasoned explanation that stands in contrast to the opinions Clapp cites. In *Schwab*, the district court recited the *Modtland* factors verbatim without identifying the bases on which it found them. 2017 WL 875260, at *2. In *Jones*, the district court did not discuss the third *Austin* factor or any of the *Modtland* factors at all. 2015 WL 4528943, at *3-4. And in *Aranjo*, no transcript of the appellant’s hearing existed “and the district court did not record an order making or describing its findings”; therefore, this court could not “assess whether the district court adequately articulated and substantiated the three *Austin* findings before revoking [appellant’s] probation.” 2014 WL 7344285, at *2.

Because the district court articulated the factual basis underlying its express finding that the second *Modtland* factor supported its determination that confinement outweighed the policies favoring probation, we conclude that the district court did not abuse its discretion when it revoked Clapp’s probation.

Affirmed.