

*This opinion is nonprecedential except as provided by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
A24-1703**

State of Minnesota,
Respondent,

vs.

Leo Joseph Goulette, III,
Appellant.

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

Goodhue County District Court
File Nos. 25-CR-19-3070, 25-CR-22-1281

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Reyes, Judge; and Schmidt,
Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant Leo Joseph Goulette, III argues that the district court abused its discretion
by revoking his probation. We affirm.

FACTS

Respondent State of Minnesota charged Goulette with one count of being an ineligible person in possession of ammunition. Goulette pleaded guilty and received a downward dispositional departure sentence. The district court stayed imposition of the sentence for five years and placed Goulette on probation.

Two years later, the state charged Goulette with two counts of fifth-degree drug possession, one count of driving after cancellation, and one count of possession of a hypodermic needle. Goulette pleaded guilty to one count of fifth-degree drug possession and the state dismissed the other charges. The district court stayed execution of the sentence for 17 months and again placed Goulette on probation for the ammunition offense.

Between March 2023 and July 2024, the Minnesota Department of Corrections filed three probation violation reports.¹ The first violation was based on Goulette's fifth-degree drug-possession conviction, to which Goulette pleaded guilty, and Goulette's failure to enroll in treatment at a center, which Goulette admitted at the violation hearing.

The second violation report alleged Goulette failed to complete outpatient treatment. Goulette admitted to this violation at a hearing.

The third violation report alleged that Goulette failed to contact his probation officer, failed to timely provide probation with an updated address, and failed to complete a chemical-dependency evaluation and outpatient treatment. Goulette disputed the failure-to-maintain-contact violation, claiming that he attempted to contact probation but was

¹ The department of corrections filed all three violation reports in both criminal files. The contested revocation hearing occurred under both files.

unsuccessful because he had to use someone else's phone. Goulette admitted that he did not timely provide probation with his new address and that he did not complete outpatient treatment. The district court revoked Goulette's probation and executed both sentences.

Goulette appeals.²

DECISION

Probation violations must be proved by clear and convincing evidence. Minn. R. Crim. P. 27.04, subd. 2(1). "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).

After a district court finds a probation violation has occurred, it has the discretion to continue probation, impose an intermediate sanction, or revoke probation and execute the stayed sentence. Minn. Stat. § 609.14, subd. 3(1) (2024); Minn. R. Crim. P. 27.04, subd. 3(2)(b). If the district court chooses to revoke probation, the 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.

Goulette argues that the district court abused its discretion because it did not make sufficient particularized findings under the second and third *Austin* factors. Whether a district court made the required *Austin* findings is a question of law that we review de novo. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

² The state did not file a response brief. We ordered that the case will be determined on the merits pursuant to Minn. R. Civ. App. P. 142.03.

I. The district court made sufficient findings on the second *Austin* factor.

Goulette contends that the district court abused its discretion on the second *Austin* factor because the court “failed to find that the violations were intentional or inexcusable.”

But at the contested-revocation hearing, the district court made the following findings:

All right. Based upon the testimony that is before this Court, the Court finds that Mr. Goulette is in violation of each of the alleged violations. Specifically[,] the Court finds that Mr. Goulette was required to report to his Wisconsin probation agent on June 14, 2024, and he failed to do so. The Court finds that [the probation officer]’s testimony was credible. But the Court also finds that the defendant admitted to not making that appointment.

Additionally, the Court finds by clear and convincing evidence that the defendant failed to update his address within 72 hours. The Court finds it credible that [A.S.]—when [A.S.] testified that he was no longer at that residence by July 9th, 2024, the defendant did not provide any information about him leaving that address, nor did he provide any information about his new address to probation, neither to his Wisconsin agent, or [A.S.].

The Court does not find that the defendant had no phone at that time to be a justifiable excuse as to why he did not provide that updated address or at least that he no longer was living at his son’s house. *That was not justifiable* as to why he did not follow that condition.

Additionally, the defendant admitted that he left that address and all he did was call and leave a message. He did not indicate that he provided a new and updated address, and he did not indicate that he provided—or indicated that he was no longer at his son’s. So I find between [A.S.]’s testimony and the defendant’s testimony, that the second element—or the second allegation was met.

Additionally, the Court finds that the defendant failed to follow the treatment conditions in the third allegation here. [A.S.] credibly testified that the defendant completed his inpatient treatment, and one of the recommendations was that he

continue with outpatient treatment. Prior to her transfer to Wisconsin, she reminded the defendant that he was required to complete outpatient treatment. He did not do so. *His excuse on the stand was that his Wisconsin agent did not direct him or follow up with him. But he was directed by [A.S.] to complete outpatient treatment.* So based upon [A.S.]’s testimony and the defendant’s testimony, I find that the defendant is in violation of Item Number 3 as well.

(Emphasis added.) Goulette argues that the district court never found his probation violations were “intentional or inexcusable” under the second *Austin* factor and that the findings the court made regarding his “excuses” only relate to the first *Austin* factor. But Goulette cites no authority that a district court’s findings cannot apply to multiple factors.

And contrary to his argument, our review of the record demonstrates that the district court found Goulette’s violations inexcusable within the meaning of the second factor. The court rejected Goulette’s reason for failing to contact his probation officer because it was “not a justifiable excuse,” which is another way to say “inexcusable.” And the district court rejected Goulette’s “excuse” for failing to complete treatment. Based upon the thorough record the district court made, we conclude that the court did not abuse its discretion by finding the second *Austin* factor was satisfied.

II. The district court made sufficient findings on the third *Austin* factor.

Goulette next argues that the district court abused its discretion on the third *Austin* factor because it simply reiterated the violations and made “conclusory statements about public safety and [his] ‘particular’ amenability to probation.” In determining whether “the need for confinement outweighs the policies favoring probation”—the third *Austin* factor—a district court considers whether one of three subfactors is met: (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 (quotations omitted); *see also 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).

Goulette cites multiple nonprecedential cases³ to support his argument that the district court did not satisfy the third *Austin* factor. These cases are distinguishable because each case either contains no findings under the third *Austin* factor or the findings merely restated the *Modtland* subfactors. That is not the case here.

Before reciting the *Modtland* subfactors, the court made the following findings:

Now, in this case, we have continued to not contact probation. They did not know where you lived. They did not have a current address for you. And you did not complete an updated chemical dependency evaluation.

It is clear to this Court that *you have failed to maintain sobriety in the community and failed to follow through with treatment. It is imperative for public safety that you remain sober in the community, and you have been unable to do so.*

³ *State v. Vivas Buezo*, No. A22-0917, 2023 WL 1098172, at *3 (Minn. App. Jan. 30, 2023) (noting the district court merely restated subfactors); *State v. Rogers*, No. A22-0649, 2023 WL 125845, at *2 (Minn. App. Jan. 9, 2023) (same); *State v. Hill*, No. A19-0313, 2019 WL 5107465, at *5 (Minn. App. Oct. 14, 2019) (noting the district court failed to address second *Austin* factor and inadequately addressed the third factor); *State v. Trott*, No. A18-1995, 2019 WL 3886915, at *3-4 (Minn. App. Aug. 19, 2019) (concluding that the district court improperly revoked probation by citing nine pending cases and finding the defendant does not like probation); *State v. Schwab*, No. A16-1371, 2017 WL 875260, at *2-3 (Minn. App. Mar. 6, 2017) (concluding that the district court did not specify the violations and restated subfactors); *State v. Arango*, No. A14-0712, 2014 WL 7344285, at *2 (Minn. App. Dec. 29, 2014) (noting the lack of a record documenting any findings).

Additionally, you have not cooperated with probation, failed to maintain contact with them. And *probation cannot supervise you when it's unclear where you're located.*

As such, you're not particularly amenable to probation supervision. And with your failed attempts at sobriety within the community, you're not particularly amenable to treatment. So the Court does not see how treatment court is appropriate in this case, especially with this Court's finding that you're not amenable to treatment or probation.

Additionally, I'll note that you received a dispositional departure, where the Court had to find offender-based reasons as to why you deserved that departure. And you've squandered that opportunity. This is your third probation violation. You only received [four] days of jail time at the beginning of your sentence.

The law said you are presumed to do 60 months of prison based upon your offense. The only rational option for this Court is to impose the original sentence that was stayed by this Court.

I will note that probation, in its original recommendation, made a determination or recommendation that this crime was less onerous because it was just a bullet or ammunition. *The legislature has made it clear that firearms and ammunition are equally dangerous under the law and deserve the same penalties.*

And the Court did not make an initial finding of a durational departure finding that this was less onerous because this was ammunition. The Court only made a dispositional departure finding.

So based upon the complete record before this Court, the Court is finding that the need for confinement outweighs the policies favoring probation. The Court finds that confinement is necessary to protect the public from further criminal activity by you, Mr. Goulette, and it would unduly depreciate the seriousness of the multiple violations that have been before this Court if your prison sentence was not revoked.

(Emphasis added.)

Based on the record, we conclude that the district court made findings under multiple *Modtland* subfactors. First, the district court made findings about why “confinement is necessary to protect the public from further criminal activity,” satisfying the first *Modtland* subfactor. *See Modtland*, 695 N.W.2d at 607 (quotation omitted). For example, the district court found that “[i]t is imperative for public safety that you remain sober in the community, and you have been unable to do so.” The district court also found that Goulette failed to maintain contact with his probation officer, and as a result, probation could not monitor Goulette’s rehabilitation, which hindered his sobriety.

Second, the district court also made findings about why refusing to execute Goulette’s sentence “would unduly depreciate the seriousness of the [offenses],” satisfying the third *Modtland* subfactor. *See id.* (quotation omitted). The district court found that Goulette already received a downward dispositional departure but had committed multiple probation violations since that time. *See State v. Fleming*, 869 N.W.2d 319, 331 (Minn. App. 2015) (noting that the district court properly considered a grant of downward dispositional departure when deciding to revoke probation), *aff’d*, 883 N.W.2d 790 (Minn. 2016). The court then noted that despite the opportunities Goulette received from the departure and probation, his conviction for possessing ammunition is considered by the legislature as “dangerous under the law[.]” As the district court recognized, ammunition and firearms are treated the same under Minnesota law. *See Minn. Stat. § 624.713*, subds. 1, 2 (2018). Therefore, Goulette’s offense cannot be considered less serious simply because he possessed ammunition rather than a firearm.

Goulette also argues that the district court revoked his probation “over the recommendation of both probation and the state[.]” The record does not support Goulette’s contention. At the dispositional hearing the state recommended the following:

[The state’s] recommendation is for the Court to consider Mr. Goulette for treatment court.

In the alternative, for the Court to execute the 60-month prison sentence.

....

It’s probably better off for society in general to have him in a long-term treatment program that has a lot of supervision rather than warehousing him at a prison facility. I think the facts in his overall history and everything that was brought out during the probation violation hearing justify execution. But given all the factors in this case, I think the better long-term solution would be treatment court.

And Goulette’s probation officer made these recommendations at the hearing:

Q. Looking at all of [the alleged violations] together, what is your overall opinion on Mr. Goulette’s adjustment to probation at this point?

A. This—as you stated, this is the third time we’ve been before the Court for—for violations similar to this one. Mr. Goulette has been on supervision for a very long time on and off throughout the years. And it’s my opinion at this time that he’s no longer amenable to supervision. Our attempts to provide him with treatment in the community have been unsuccessful. And he’s typically resistant to abiding by my recommendations, at least as far as aftercare programming. He does a really good job of going to the 30- to 60-day programs, and he comes back and he’s healthy and he’s doing well. And I’ve made suggestions that maybe coming back to Red Wing isn’t in his best interests, but he’s typically adamant that he needs to return to Red Wind and/or the surrounding area for whatever reason, whether it be to collect his belongings or to work or to be near family. And given these things and the

severity of the offenses, I just—at this time believe that he’s not amenable to probation and to continue to attempt to force treatment on him will not result in any different outcome.

Q. Do you believe he’s no longer amenable to probation?

A. Correct.

Q. Based on your opinion on his adjustments and his—the allegations that you testified about, what is your recommendation to the Court regarding what to do in this matter?

A. Well, at this time I’m going to—I’m recommending 365 days and then an unsuccessful discharge from probation.

I had considered execution of sentence, but I—I believe that as we discussed earlier, it’s a 60-month stayed sentence, and Mr. Goulette is on for possession of ammunition, which I don’t believe to be as onerous as if he were to be in possession of a firearm.

After hearing from the state and probation, the district court then made findings supporting two of the *Modtland* subfactors. Based upon this record, the district court did not abuse its discretion in finding that the third *Austin* factor is satisfied.

Finally, Goulette argues “the record does not support the conclusion that the need for confinement outweighs the policies favoring probation.” In support of his argument, Goulette cites *State v. Ewers*, in which this court reversed revocation without remand because the record lacked “evidence that appellant’s behavior meets [the] threshold” of the third *Austin* factor. No. A06-448, 2006 WL 2807190, at *3-4 (Minn. App. Oct. 3, 2006). But *Ewers* is distinguishable, and, therefore, not persuasive.

In that case, the alleged probation violation only included failing to maintain contact with probation officers. *Id.* at *3. Goulette’s violations included failing to enroll into a

treatment center, failing to complete outpatient treatment, failing to provide probation with his updated address, and failing to complete a chemical dependency evaluation and treatment, all of which Goulette admitted at the violation hearing. The district court thoroughly reviewed these violations, appropriately considered the *Austin* factors—and the *Modtland* subfactors—and, within its discretion, revoked Goulette’s probation.

Affirmed.