

*This opinion is nonprecedential except as provided by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
A24-1811**

State of Minnesota,
Respondent,

vs.

Joshua Thomas Lee,
Appellant.

**Filed August 4, 2025
Affirmed
Ede, Judge**

Freeborn County District Court
File Nos. 24-CR-20-263, 24-CR-20-465

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

David Walker, Freeborn County Attorney, Abigail L. Ehret, Assistant County Attorney,
Albert Lea, Minnesota (for respondent)

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

Considered and decided by Ede, Presiding Judge; Slieter, Judge; and Bond, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

Appellant challenges an order by the district court that revoked his probation and executed his prison sentences in two district court files. In particular, appellant argues that the district court abused its discretion in revoking his probation because the record does not establish that the need for confinement outweighed the policies favoring probation.

Because we conclude that the district court made sufficient findings that are adequately supported by the record, we affirm.

FACTS

Underlying Charges, Plea Agreement, and Sentence

Respondent State of Minnesota charged appellant Joshua Thomas Lee with several offenses, including third-degree burglary, in violation of Minnesota Statutes section 609.582, subdivision 3 (2018). The state later charged Lee in a second case with two offenses, including second-degree burglary, in violation of Minnesota Statutes section 609.582, subdivision 2(a)(1) (2018). All of the charges—seven in total—arose from incidents that occurred in February 2020. The parties eventually reached a global plea agreement to resolve the two cases. Lee pleaded guilty to third-degree burglary in the first case and to second-degree burglary in the second case, and the state agreed to dismiss the remaining charges. And, consistent with the parties' agreement, the district court furloughed Lee to inpatient chemical-dependency treatment.

At a sentencing hearing in May 2021, the district court granted Lee's motion for downward dispositional departures in both cases, stayed execution of a 32-month sentence for the third-degree burglary charge and a 57-month sentence for the second-degree burglary charge, and placed Lee on probation. The conditions of Lee's probation included that he: follow state and federal laws; contact probation as directed; inform probation within 72 hours of any contact with law enforcement, a new criminal charge, or a change of address, employment, or telephone number; avoid possessing alcohol and mood-altering chemicals; complete chemical-dependency treatment and follow recommendations; pay

restitution; complete 40 hours of sentence to service (STS); and submit to random substance-use testing.

Probation Violation Reports

In July 2021, the department of corrections (DOC) filed the first of four separate probation violation reports. A corrections agent alleged that Lee neither contacted probation as directed nor informed probation of a change of address. After a contested-revocation hearing, the district court found that there were sufficient facts to establish that Lee had violated his probationary conditions but nonetheless reinstated him on probation.

In May 2023, the DOC filed the second probation violation report. Lee later admitted that he had violated his probationary conditions because he did not follow the law and he used and possessed controlled substances. The district court reinstated Lee on probation with an added condition that he complete an updated chemical-dependency assessment and follow any resulting recommendations.

In November 2023, the DOC filed the third probation violation report. Lee again admitted that he had violated his probationary conditions by using controlled substances. The district court again reinstated Lee on probation and ordered him to complete another chemical-dependency assessment, if necessary.

In March 2024, the DOC filed the fourth probation violation report, this time alleging that Lee did not report to three scheduled meetings with his probation agent in February 2024 and did not complete 40 hours of STS and a mental-health evaluation. Alleging that Lee also did not report to probation in April 2024, the DOC later filed an

amendment to the March 2024 report. And, in a second amendment, the DOC further alleged that Lee did not report to a meeting in May 2024.

Final Contested-Revocation Hearing

The district court held a contested-revocation hearing in August 2024. During the hearing, Lee and his probation officer (C.H.) testified.

C.H. stated that Lee had generally been unsuccessful on probation and that—aside from “an official scheduled appointment” in February 2024 and a “couple” of phone conversations—she had not had an in-person meeting with him. In addition, C.H. summarized Lee’s history of probation violations.

Moreover, C.H. told the district court that Lee did not attend three appointments in February 2024 and that Lee neither provided notice of his absences nor contacted C.H. to reschedule. And C.H. testified that, although she tried to reschedule these meetings many times, Lee’s failure to report to her persisted. According to C.H., her inability to meet with Lee made it difficult for her to conduct random tests for controlled substances and to observe whether he was under the influence of alcohol or drugs.

C.H. also addressed Lee’s failure to complete 40 hours of STS. Although Lee testified that his previous probation agent had allowed him to satisfy this requirement by working at Catholic Charities, C.H. stated that she saw no notes in the file to that effect.

In addition, C.H. reported that Lee had failed to follow through with the recommendations of his mental-health assessment. She explained that, although Lee completed the mental-health assessment, he neither provided C.H. with a copy of it nor followed the assessment’s recommendations. During his testimony, Lee claimed that he

did not complete the recommendations “[o]ut of fear . . . of getting arrested for [an outstanding] warrant.” Lee also stated that there was “no good reason that [he] didn’t have it done other than the fact that [the mental-health provider was] behind several months, so [he] had to wait for them to call [him].” And Lee admitted that, in the nine months that he waited for such contact from his provider, he made no attempt to follow up on the recommendations of the mental-health assessment.

C.H. furthermore testified that Lee was instructed to immediately contact the DOC after he was released from jail on April 26, 2024 following his arrest on a probation warrant, but he did not do so. More specifically, C.H. elaborated that Lee did not communicate with her through any means and provided no excuse for this noncompliance. And C.H. said that, when she tried to call and email Lee on April 30, she received no response.

Finally, C.H. explained that, when Lee was similarly jailed and released in May 2024, he was instructed to contact her and he likewise did not comply. She stated that she eventually spoke with Lee on the phone and scheduled an appointment with him for May 21 at a probation office in Winona. But C.H. testified that, about ten minutes before the May 21 meeting, Lee “left a voicemail saying he would be late because he ran into some rain in St. Charles,” although he said “that he [still] was on his way to the office.” C.H. reported that she “tried calling him back” close to the end of the day “because he still hadn’t reported.” And C.H. said that, the next day, she discovered she “had a voicemail from . . . Lee explaining that he had . . . gotten to the office after [it] had closed,” “that he had ridden his motorcycle down to Winona, and that it [had been] raining and storming

that day,” which C.H. acknowledged was true. C.H. testified that, since May 21, she had not spoken with Lee.¹

Overall, C.H. said that she could not monitor Lee properly because he had not been in contact with her. In C.H.’s opinion, Lee had received “all the proper opportunities to engage in and be successful on probation.” According to C.H., “Lee[] had months to follow through with recommendations that he [had] received through the assessment he completed and . . . just [had not] made himself available to probation or treatment providers.” C.H. did not believe that there were any available options to help Lee succeed on probation. But C.H. also acknowledged that Lee had not violated his probationary conditions by committing additional crimes.

Lee requested that the district court place him back on probation because he needed mental-health resources and did not want to lose his job. He told the district court that his father had recently been released from a hospital to a nursing home and his mother was in a hospital intensive-care unit. Lee also said that he needed to care for his children.

Finding that much of Lee’s testimony was not credible, the district court determined that the state had met its burden to prove the alleged violations. In addressing disposition, the district court discussed the third *Austin*² factor. The district court reasoned that this was

¹ On cross-examination, Lee conceded that “there was a little bit of a lack of communication between” him and C.H. He acknowledged that he had moved to Rochester but waited about three months to inform probation. And Lee admitted that he had failed to inform probation of his new employment within 72 hours.

² See *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980) (explaining that, before a district court revokes probation, the court must (1) “designate the specific condition or conditions

Lee's fourth probation violation and that Lee had "consistently found himself before the [c]ourt from the time of sentencing, every six to eight months, on violations." Although the district court acknowledged that Lee's violations were not for new crimes, the court identified the problem as Lee's lack of contact with probation since May 2024, which prevented the court from knowing whether Lee had been engaging in antisocial behaviors, such as using controlled substances, failing to complete treatment, and otherwise violating probationary conditions.

The district court explained that it was unpersuaded by Lee's employment and personal circumstances because it believed that Lee would have pursued mental healthcare and followed the recommendations of his assessment if his job and family were important to him. And the district court determined that Lee should have asked C.H. for assistance with following the recommendations of his mental-health assessment rather than doing nothing based on his claimed fear of arrest for failing to contact C.H. In the district court's assessment, Lee's lack of compliance conveyed that he was "not someone who's amenable to probation."

Based on the above, the district court ruled that reinstating Lee on probation was not appropriate, reasoning:

I think it does unduly depreciate the seriousness of the violations if probation isn't revoked. We expect people to do the bare minimum. We expect people to show up to their probation meetings, to maintain contact with their probation officers, and . . . Lee couldn't even do that.

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").

I don't know that I can find that he's somehow amenable to probation at this point when he's been back before the [c]ourt on numerous occasions, you know, being told you need to use your probation officer, you need to follow these conditions, you need to do these things, and he still doesn't do it. I'm not convinced by his explanations here that somehow this was all just a miscommunication or a misunderstanding because he had a couple of different probation officers.

. . . Lee isn't the first person to have more than one probation officer. It's on . . . Lee to make sure that he understands what his obligations are and who he's responsible to, and he just didn't do that

So I'm going to find that it would unduly depreciate the seriousness of the violations here if I don't revoke the probation and if I were to put . . . Lee back on probation at this point. I just can't – I can't believe his explanations or accept them as reasonable here given the testimony.

The district court therefore revoked Lee's probation and executed the imposed sentences.

This appeal follows.

DECISION

Lee asks that we reverse the district court's order revoking his probation based on his argument that the record does not establish that the need for confinement outweighed the policies favoring probation. We conclude that Lee's contention does not warrant reversal.

If the district court determines that an individual has violated probation or the individual admits a probation violation, the court may either "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. Smith*, 994 N.W.2d 317, 320 (Minn. App. 2023) (quotation omitted), *rev. denied* (Minn. Sept. 27, 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).

As noted above, before the district court may revoke an individual’s 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 [the] need for confinement outweighs the policies favoring probation.” *Austin*, 295 N.W.2d at 250. “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 he or she cannot be counted on to avoid antisocial activity.” *Id.* at 251 (quotation omitted). “[C]ourts should not assume that they have satisfied *Austin* by reciting the three factors and offering 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). Whether the district court “has made the findings required under *Austin* presents a question of law” that appellate courts review de novo. *Id.* at 605.

Lee challenges the district court’s findings on the third *Austin* factor—whether the need for confinement outweighs the policies favoring probation. When analyzing the third 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, and base their decisions on

sound judgment and not just their will.” *Id.* at 606–07 (quotation omitted). In doing so, the district court must consider whether:

- (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. “Only one *Modtland* subfactor is necessary to support revocation.” *Smith*, 994 N.W.2d at 320.

Lee maintains that the record does not show the need for confinement outweighed the policies favoring probation. He asserts that, in making its determination on the third *Modtland* subfactor, the district court neither considered nor concluded that Lee had exhausted community-based options for chemical-dependency or mental-health treatment.³ Lee reasons that, because he had been employed for over a year, had been caring for his parents, had completed chemical-dependency treatment, and had access to chemical-dependency and mental-health programming in the community, the district court should not have revoked his probation.

³ Lee also seems to advance an argument about the first *Modtland* subfactor. But because the district court revoked Lee’s probation under the third *Modtland* subfactor and only one subfactor is necessary to support revocation, we decline to address Lee’s argument on the first *Modtland* subfactor. *See id.*

In furtherance of his argument, Lee cites two nonprecedential opinions.⁴ *See State v. Stradtman*, No. A19-1322, 2020 WL 1845512 (Minn. App. Apr. 13, 2020); *State v. Sayers*, No. A15-1345, 2016 WL 1619389 (Minn. App. Apr. 25, 2016). Neither decision supports reversal here.

In *Stradtman*, the district court determined that the appellant had violated probation and stated that “the need for confinement outweigh[ed the] policy favoring probation because [the appellant was] in need of correctional treatment that [could] be best offered if confined, and it would [have] unduly depreciate[d] the seriousness of the violation if probation were not revoked.” 2020 WL 1845512, at *3. The district court also told the appellant she “had not been amenable to probation or treatment.” *Id.* On appeal, we concluded that the district court had abused its discretion by merely reciting the *Austin* factors and that the court’s “findings reveal[ed] neither the evidence upon which the . . . court relied nor its substantive reasons for revoking [the] appellant’s probation.” *Id.* Reasoning that the district court “did not describe the seriousness of [the] appellant’s violation in concluding that not revoking her probation would depreciate it,” we reversed and remanded for additional findings on the third *Austin* factor. *Id.* at *3–4.

In *Sayers*, the district court revoked the appellant’s probation because he was not taking probation seriously, his behavior was escalating, and his violations were underscored by his use of alcohol. 2016 WL 1619389, at *2. On appeal, we concluded that

⁴ *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) (“Nonprecedential opinions . . . are not binding authority except as law of the case, res judicata or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority.”).

“the district court . . . did not explicitly consider any of the three [*Modtland*] subfactors” and that the record was insufficient for appellate review. *Id.* at *3.

We conclude that *Stradtman* and *Sayers* are distinguishable from the case at hand. In this case, the district court stated during the final contested-revocation hearing that “this is . . . Lee’s fourth probation violation in these matters” and that “Lee ha[d] consistently found himself before the [c]ourt from the time of sentencing, every six to eight months, on violations.” The district court explained that Lee had not maintained contact with his probation agent, which made it impossible to know whether Lee had engaged in antisocial behaviors, including the use of controlled substances and the avoidance of required mental-health treatment. Although the district court acknowledged that Lee had been employed and was caring for his parents, the court did not consider those reasons sufficient to maintain Lee on probation based on the entire record before the court. Nor did the district court find Lee’s explanations for his probation violations to be credible—a determination to which we must defer. *State v. Losh*, 694 N.W.2d 98, 102 (Minn. App. 2005), *aff’d*, 721 N.W.2d 886 (Minn. 2006). And while the district court did not find that Lee had exhausted community-based options for treatment, the court did determine that Lee had not utilized the resources that probation had made available for him. We therefore conclude that the district court did far more than just recite the *Austin* factors and *Modtland* subfactors. Instead, the district court discussed the evidence that it relied on for revocation and provided case-specific reasons why the need for confinement outweighed the policies that favored continuing probation.

Moreover, based on our careful review of the record, we conclude that the district court's findings in support of its decision to revoke Lee's probation are reasonably supported. C.H. testified that this was Lee's fourth probation violation, that Lee had generally been unsuccessful on probation, and that she had not been able to properly monitor Lee because he did not maintain contact with her. The lack of contact prevented C.H. from conducting random substance-use testing and from determining whether Lee was under the influence. Although he had been assigned to supervision by C.H. for four months—aside from an official scheduled appointment in February 2024 and a “couple” of phone conversations—Lee had failed to meet with C.H. in person. Lee conceded that he had not timely informed probation of changes in his employment and address, instead taking several months to update probation about these changes. He also acknowledged that he had not followed up on the recommendations of his mental-health assessment.

In sum, the record establishes that the district court's decision to revoke Lee's probation was not a “reflexive reaction to an accumulation of technical violations.” *Austin*, 295 N.W.2d at 251 (quotation omitted). The district court considered and made findings about Lee's continued lack of cooperation with probation, his need for treatment, and the manner in which his conduct precluded probationary supervision. And the district court's findings are reasonably supported by the record. Thus, we conclude that the district court acted within its discretion by ordering revocation of Lee's probation and execution of his prison sentences.

Affirmed.