

*This opinion is nonprecedential except as provided by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
A25-0005**

State of Minnesota,
Respondent,

vs.

Franklin Pierce Barnes,
Appellant.

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

Benton County District Court
File No. 05-CR-23-1867

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

Kathleen L. Reuter, Benton County Attorney, Michael JG Schnider, Assistant County Attorney, Foley, Minnesota (for respondent)

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

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

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

Appellant challenges the district court's revocation of his probation, arguing that the district court abused its discretion because the evidence did not establish that the violation of his probation was intentional or inexcusable or that the need for confinement outweighed the policies favoring probation. We affirm.

FACTS

The following chronology summarizes the procedural history in this matter. On October 26, 2023, appellant Franklin Pierce Barnes was charged with felony first-degree refusal to submit to testing (count I). Respondent State of Minnesota also charged Barnes with felony first-degree driving while impaired, but dismissed that charge as part of a plea agreement under which he pleaded guilty to count I. Barnes was released pending sentencing with conditions, which included that he remains law-abiding, meet with his probation agent weekly, not leave Minnesota without court approval, cooperate with the presentence investigation (PSI), and not use or possess alcohol or drugs. The district court subsequently issued a warrant for Barnes's arrest after learning that he failed to cooperate with the PSI. On April 12, 2024, Barnes was arrested on the warrant in South Dakota.¹

At sentencing on April 25, 2024, the district court imposed a 42-month stayed sentence and placed Barnes on probation with conditions that again included that he

¹ Barnes did not have court approval to leave the state.

remains law abiding, report to his probation agent as directed, and not use or possess alcohol or drugs.

The next day, on April 26, police arrested Barnes in Cottage Grove, and the state subsequently charged him with threats of violence, domestic assault, and open bottle. The Department of Corrections (DOC) filed a probation violation report on May 2, 2024, alleging that Barnes had (1) failed to remain law abiding, (2) used alcohol, and (3) possessed alcohol. Following a bail hearing, Barnes was released on the same conditions.

The DOC filed an addendum to its violation report on May 17, 2024, alleging that Barnes failed to remain law abiding on May 11 and May 17. At a hearing on June 5, pursuant to an agreement with the state, Barnes admitted that he failed to remain law abiding and used alcohol in violation of his conditions of probation in exchange for completing an updated chemical-use assessment and serving 45 days in jail. The district court accepted Barnes's admissions, found him in violation of his probation, imposed a sanction of 45 days in jail, and ordered an updated chemical-use assessment.

On August 22, shortly after Barnes got out of jail, the DOC filed a new probation violation report alleging that he (1) failed to get permission from his agent before leaving the state, (2) used alcohol, (3) possessed marijuana, and (4) failed to complete an updated chemical-use assessment.

At Barnes's second probation-revocation hearing on October 4, 2024, he admitted the four new violations and only argued disposition. The district court revoked his probation and executed his 42-month prison sentence. This appeal follows.

DECISION

“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). A district court abuses its discretion when it bases its decision on an erroneous view of the law, or when its decision is against logic and the facts in the record. *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017). We review whether the district court made the required findings to revoke probation de novo. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005). “When determining if revocation is appropriate, courts must 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 (quotations omitted). “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.” *Austin*, 295 N.W.2d at 251 (quotations omitted).

The supreme court in *Austin* articulated three specific findings the district court must make before revoking probation: “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.” *Id.* at 250. The district court must make these findings on the record and “should not assume that [it] ha[s] satisfied *Austin* by reciting the three factors and offering general, non-specific reasons for

revocation.” *Modtland*, 695 N.W.2d at 608. Barnes argues that the district court abused its discretion with respect to its findings under the second and third *Austin* factors.

A. The district court did not abuse its discretion when it determined that Barnes’s failure to complete a chemical-use assessment and follow treatment recommendations was inexcusable or intentional under the second *Austin* factor.

Barnes argues that because “[t]he record does not support the district court’s finding that [he] intentionally or inexcusably failed to complete the chemical use assessment and follow recommendations,” this court should reverse the district court’s revocation of his probation. We are not persuaded.

The district court found that all four alleged violations were intentional and inexcusable, including Barnes’s failure to follow the treatment recommendation of his chemical-use assessment. Prior to the district court’s finding, Barnes testified that, when he was placed on probation, he understood all the conditions of his probation. After the state clarified for the district court that Barnes did in fact complete a chemical-use assessment in June, Barnes confirmed that he did complete the assessment but did not complete the recommendation of the assessment—namely, that he enter a treatment program. Barnes testified that he “didn’t know [he] had to go to rehab” and “thought everything was complete on that end.” Barnes’s counsel noted that “treatment has been a big thing” for him, that Barnes had never been to treatment, and that he was just accepted into a treatment program at Big Lake Nystrom. Barnes’s counsel stated that he believed Barnes did not pursue treatment following the chemical-use assessment because he was not aware that treatment was an option. Counsel further stated: “I’m guessing somehow

the chemical use assessment and recommendations fell through the cracks. So that might be an explanation for that.”

The district court seemingly made a credibility determination with respect to Barnes’s testimony, and rejected it, when it found that his failure to follow the treatment recommendation was intentional and inexcusable. And we defer to a district court’s credibility determinations. *Lewis v. Comm’r of Pub. Safety*, 737 N.W.2d 591, 594 (Minn. App. 2007). Based on its credibility determination, the district court did not err when it found that Barnes’s failure to follow the recommendations of the chemical-use assessment was intentional and inexcusable.

But this determination was not ultimately the district court’s basis for revoking Barnes’s probation. The district court relied on the three other violations: failing to get permission before leaving the state, using alcohol, and possessing marijuana. Barnes admitted these violations. With respect to these violations, the district court stated at the probation-revocation hearing: “I do find that it would unduly depreciate the seriousness of the violation, *specifically the amount of alcohol consumed, and almost as importantly the fact that you were in a different state. . . .*” (emphasis added). The district court continued, “[W]hen you’re in a different state, when you’re not in contact with your agent and you’re not following the rules of probation, obviously, we’ve seen that that leads to alcohol consumption. It has led previously to a violation and now our second violation.”

We conclude that the district court did not abuse its discretion in determining that Barnes’s conduct was inexcusable and intentional under the second *Austin* factor.

B. The district court made sufficient findings on the third *Austin* factor and did not abuse its discretion in determining that the need for confinement outweighed the policies favoring probation.

Barnes contends that the district court abused its discretion by finding that the need for his confinement outweighed the policies favoring probation. When considering the third *Austin* factor, district courts look to the three *Modtland* subfactors:

whether (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 [the offender] is confined, or (3) it would unduly depreciate the seriousness of the violation if probation were not revoked.

State v. Smith, 994 N.W.2d 317, 320 (Minn. App. 2023) (alteration in original) (quotations omitted), *rev. denied* (Minn. Sept. 27, 2023). A finding on any one *Modtland* subfactor is enough to support revocation. *Id.* Here, the district court sufficiently addressed all three subfactors.

The district court stated that the consequences when Barnes drinks and gets behind the wheel “are potentially significant,” that these actions “put others in danger,” and that “confinement is necessary to ensure public safety.” The district court further noted that there will be opportunities for Barnes to receive treatment while in the DOC’s custody, which the district court determined to be necessary given his tendency to leave the state and consume alcohol in violation of his conditions of probation. Finally, the district court acknowledged that Barnes’s past similar behavior of failing to contact his agent, traveling to a different state without permission, and consuming alcohol “has led previously to a violation and now our second violation” and that “it would unduly depreciate the

seriousness of this continued violation if we didn't revoke [probation] and execute the sentence.”

We note that, given the language in Minn. Stat. § 609.14, subd. 1(a) (2024), “[r]evocation shall only be used as a last resort when rehabilitation has failed,” the best practice for district courts is to have a more explicit discussion of rehabilitation and why revocation is the appropriate path forward. Here, while the district court did not have a lengthy discussion with appellant about his opportunities for rehabilitation, this is Barnes’s second probation violation. His first, for similar conduct occurring one day after his sentencing, did not result in revocation. Instead, Barnes served 45 days at a local jail. He was only out of jail for approximately one month before committing the conduct underlying the second violation report, which ultimately led to the revocation of his probation. During this roughly one-month period, Barnes did not attempt to enroll in a treatment program or follow the conditions of his release, which he testified that he understood. Because the district court went through each of the three *Modtland* subfactors and provided more than just “general, non-specific reasons for revocation,” we conclude that it satisfied the third *Austin* factor. *Smith*, 994 N.W.2d at 320.

Affirmed.