

*This opinion is nonprecedential except as provided by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
A25-1350**

State of Minnesota,
Respondent,

vs.

Joseph Robert Udstuen,
Appellant.

**Filed May 4, 2026
Affirmed
Smith, John, Judge ***

LeSueur County District Court
File No. 40-CR-23-9

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

Brent Christian, Le Sueur County Attorney, Le Center, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julia Q. Brady, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Larkin, Judge; and Smith,
John, Judge.

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the district court's decision to revoke probation and execute the previously stayed sentence of appellant Joseph Robert Udstuen because the district court made sufficient findings on all three *Austin* factors.¹

FACTS

Udstuen pleaded guilty to possession of a controlled substance in the first degree (389.17 grams of methamphetamine) in violation of Minn. Stat. § 152.021, subd. 2(a)(1) (2022). The district court sentenced him to 126 months in a correctional facility but stayed execution of the sentence for five years. The district court required Udstuen to (1) serve 180 days in jail, allowing work release; (2) abstain from using alcohol or mood-altering drugs; (3) submit to random breath, urine, or saliva testing; and (4) remain in contact with his probation officer as directed.

Udstuen struggled to maintain sobriety and twice his probation officer held a sanctions conference² to address technical probation violations due to relapses where Udstuen used cocaine and alcohol and failed to submit to random drug testing. In May 2025, after an additional relapse, failure to submit to testing, and failure to meet with his

¹Before revoking a defendant's probation, a district court must (1) designate the specific condition violated, (2) "find that the violation was intentional or inexcusable, " and "find that the need for confinement outweighs policies favoring probation." *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980).

² A sanctions conference is a voluntary conference in which interested parties address and correct an offender's violation of probation conditions. *See* Minn. Stat. §§ 244.197, .198, .1995 (2024).

probation officer as directed, the probation officer filed a notice with the district court reporting that Udstuen had violated his probation. The probation officer recommended that Udstuen serve 90 days in jail as an intermediate sanction and, upon release, enter and complete a residential chemical-dependency program.

At a probation-violation hearing, Udstuen admitted to using cocaine and explained some of the challenges he faced remaining sober and how that had affected his housing. He also explained that when he prioritized work and deprioritized his treatment, he found it more difficult to remain sober. The district court expressed that it understood some of Udstuen's challenges, saying that Udstuen's failure to participate in testing and keep in contact with his probation officer were secondary to its primary concern, "which is his continued use of cocaine and other mood-altering substances." The district court accepted Udstuen's admission that he failed to abstain from using mood-altering substances and found that Udstuen had intentionally done so. After reviewing the record and hearing arguments from the parties, the district court revoked Udstuen's probation and committed him to the Commissioner of Corrections for 126 months with credit for time served.³

DECISION

Udstuen argues that the district court abused its discretion by failing to make sufficient findings on the third *Austin* factor before it revoked his probation.

District courts have broad discretion to determine whether "there is sufficient evidence to revoke probation," and appellate courts reverse an order revoking probation

³ Respondent State of Minnesota did not file a brief with the court of appeals. Therefore, the case shall be determined on the merits as provided in Minn. R. Civ. App. P. 142.03.

only if the district court clearly abused its discretion. *Austin*, 295 N.W.2d at 249-50. “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. Fortner*, 989 N.W.2d 368, 374 (Minn. App. 2023) (quotation omitted).

When a defendant violates a condition of probation, the district court may revoke probation and execute the previously stayed sentence. Minn. Stat. § 609.14, subds. 1(a), 3(1) (2024). “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 [they] cannot be counted on to avoid anti-social activity.” *Austin*, 295 N.W.2d at 251 (quotations omitted). Before revoking a defendant’s probation and executing a stayed sentence, the 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.” *Id.* at 250. Appellate courts review de novo whether the district court made the findings required under *Austin*. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

Udstuen does not dispute that the district court properly found facts to support *Austin* factors one and two. However, he contends that the district court abused its discretion by not making the required findings on the third *Austin* factor before revoking his probation.

Under the third *Austin* factor, district courts must balance “the probationer’s interest in freedom and the state’s interest in [e]nsuring his rehabilitation and the public safety.” *Id.* at 606-07. To make a finding on this factor, the district court considers 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 he is confined”; or (3) “it would unduly depreciate the seriousness of the violation if probation were not revoked.” *Id.* (quotation omitted). Only one *Modtland* subfactor is necessary to support revocation. *State v. Smith*, 994 N.W.2d 317, 320 (Minn. App. 2023), *rev. denied* (Minn. Sept. 27, 2023).

The district court determined that placing Udstuen back on probation would unduly depreciate the seriousness of the violation given the significance of the original charge. We therefore evaluate whether the district court made sufficient findings to support its determination under the third *Modtland* subfactor, bearing in mind that one *Modtland* subfactor is sufficient to support revocation.

Udstuen argues that the district court did not make sufficient factual findings to support this determination, claiming that the district court “merely referenced” that he had been granted a downward dispositional departure and then made its determination. Although it is proper for the district court to consider an initial grant of a downward dispositional departure when determining whether to execute a stayed sentence, that was not the only fact considered by the district court. *State v. Fleming*, 869 N.W.2d 319, 331 (Minn. App. 2015), *aff’d*, 883 N.W.2d 790 (Minn. 2016).

The district court explained that it was concerned about Udstuen’s failure to abstain from using illegal substances “because that’s what he [had] a significant track record of failing to do.” After reviewing Udstuen’s entire record, it found that “his whole criminal record [was] full of property offenses,” which may be a result of Udstuen’s chemical use

that had “caused his life innumerable problems.” In addition, the district court found that Udstuen “had a year of freedom to address the issues that were originally imposed as a condition of his downward departure. That failure rests solely on him . . . [H]e didn’t take that chance and run with it and change his life around.”

“The decision to revoke . . . requires a showing that the offender’s behavior demonstrates that [they] cannot be counted on to avoid antisocial activity.” *Austin*, 295 N.W.2d at 251 (quotations omitted). In *Austin*, the supreme court concluded that revocation was appropriate in part because the appellant had been offered but failed to take advantage of treatment so that he could rehabilitate. *Id.* “Consequently, under [those] facts, policy considerations required revocation.” *Id.*; *see also Fortner*, 989 N.W.2d at 376-77 (affirming the district court’s determination that not revoking probation would unduly depreciate the seriousness of the violations when probationer repeatedly used substances despite access to treatment). The same can be said of the circumstances here.

Although Udstuen emphasizes that the district court revoked his probation after his “first formal technical violation,” his probation officer had provided Udstuen two earlier opportunities to participate in sanctions conferences to correct his behavior. Udstuen did not take advantage of those opportunities but continued to violate the terms of his probation as the district court properly found. We discern no abuse of discretion in the district court’s determination that repeatedly using drugs while on probation for a very serious drug charge, despite conditions requiring abstinence, justifies revocation of probation because it demonstrated that Udstuen could not be counted on to avoid antisocial activity.

Udstuen contends, however, that the district court “undeniably did not consider” the reasons for and against revocation. We disagree. The district court stated that it had considered the entire record and studied the *Austin* factors before the hearing. It also explained that it sends people to prison “as a last resort” and that it wanted to think about everything the attorneys had argued—Udstuen’s family situation, employment, and input from the probation department before making its decision. On this record the district court very thoughtfully considered the reasons both for and against revocation, and that the district court’s decision was not a reflexive one based on Udstuen’s multiple failures to comply with the terms of his probation. We conclude that the district court did not abuse its discretion by revoking Udstuen’s probation.

Affirmed.