

*This opinion is nonprecedential except as provided by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
A25-2037**

State of Minnesota,
Respondent,

vs.

Nicholas Gene Stensrud,
Appellant.

**Filed September 8, 2026
Reversed and remanded
Cochran, Judge**

Goodhue County District Court
File Nos. 25-CR-18-463, 25-CR-18-615, 25-CR-22-2589

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Sean Michael McGuire, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Cochran, Judge; and Florey, Judge.*

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

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant challenges the district court's order revoking his probation. Because we conclude that respondent failed to prove by clear and convincing evidence that appellant violated a specific condition of his probation, we reverse the order revoking probation and remand to the district court to reinstate appellant's probationary status.

FACTS

Appellant Nicholas Gene Stensrud was placed on probation in three separate court files pursuant to two plea agreements with respondent State of Minnesota. Under the first plea agreement, Stensrud pleaded guilty to fourth-degree criminal sexual conduct, felony domestic assault, and threats of violence in court file 25-CR-18-463 and pleaded guilty to violating a harassment restraining order (HRO) in court file 25-CR-18-615. The district court sentenced Stensrud to sentences of 120 months, stayed for five years, in court file 02-CR-18-463 and to a concurrent 27-month sentence, stayed for five years, in court file 02-CR-18-615. Under the second plea agreement, Stensrud pleaded guilty to fifth-degree drug possession in court file 02-CR-22-2589. The district court imposed a stayed sentence of 24 months' imprisonment for that offense. The district court also imposed conditions of probation in all three court files, which required in relevant part, that Stensrud remain law abiding.

In October 2024, the Minnesota Department of Corrections filed a probation-violation report in each of the three court files alleging that Stensrud had failed to remain law abiding by incurring two felony charges in North Dakota for failing to register as a

predatory offender in that state. The report did not identify the North Dakota statute or statutes that Stensrud allegedly violated. Nor did the report allege any violations of Minnesota law.

The district court scheduled a contested probation-revocation hearing. On April 7, 2025, Stensrud moved to postpone revocation proceedings until the pending North Dakota case was resolved. The district court granted Stensrud's request and continued the probation-revocation hearing until August 4, 2025. On July 9, the parties informed the district court that the North Dakota cases had not been resolved in June 2025 as anticipated, and requested clarification on the status of the hearing set for August 4. The district court ordered that the continued probation-revocation hearing would proceed as scheduled.

Stensrud appeared in court on August 4 for the contested probation-revocation hearing.¹ As of that date, the North Dakota charges had not been resolved. At the hearing, the state presented testimony from Stensrud's probation officers, E.R. and A.S. Probation officer E.R. testified that Stensrud incurred two felony charges in North Dakota for failing to register as a predatory offender. E.R. stated that the offenses occurred while Stensrud was on probation in Minnesota. E.R. recommended that the district court find Stensrud in violation of probation for failing to remain law abiding and commit him to the commissioner of corrections for 120 months. Probation officer A.S. also testified that she believed Stensrud failed to comply with the predatory-registration requirements of North

¹ Stensrud initially planned to waive his rights and admit to the violations, but the district court determined that it could not proceed with Stensrud's admissions and that the state had to prove by clear and convincing evidence that Stensrud intentionally violated the conditions of his probation.

Dakota. In their testimony, the probation officers did not identify any specific North Dakota law that Stensrud allegedly violated or that would require Stensrud to register in North Dakota. Nevertheless, the district court ruled from the bench that the state met its burden of establishing that Stensrud violated his conditions of probation in all three court files by failing to remain law abiding because he failed to register as a predatory offender in North Dakota.

Following further briefing from the parties, the district court filed a written order in which it reiterated its finding that Stensrud had violated the terms of his probation by failing to remain law abiding. The district court also found that Stensrud's violations were intentional and inexcusable, and that the need for confinement outweighed the policies favoring probation. Based on these findings, the district court revoked the stayed sentences in each of the three court files and committed Stensrud to prison.

Stensrud appeals.

DECISION

Stensrud challenges the district court's decision to revoke his probation. Before revoking probation, a district court must find (1) the defendant violated a specific condition of probation, (2) the violation was intentional or inexcusable, and (3) the need for confinement outweighs the policies favoring probation. *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). These are known as the *Austin* factors. *State v. Modtland*, 695 N.W.2d 602, 607 (Minn. 2005) (articulating subfactors relevant to the third *Austin* factor).

“A 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. Ornelas*, 675 N.W.2d 74, 79 (Minn. 2004) (quoting *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. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017).

Stensrud raises three arguments on appeal. First, Stensrud argues that the district court violated his right to due process by requiring him to defend against the alleged probation violation based on charges in North Dakota before those charges were resolved. Next, Stensrud contends that the state failed to prove by clear and convincing evidence that he violated North Dakota law and therefore the district court abused its discretion when it found that Stensrud failed to remain law abiding as required by his probation conditions. In other words, he argues the district court abused its discretion when it found the first *Austin* factor was met. Lastly, Stensrud maintains that the district court abused its discretion in its analysis of the third *Austin* factor. For the reasons discussed below, we conclude that Stensrud’s argument regarding the first *Austin* factor requires reversal, and, consequently, we do not reach his remaining arguments.

As discussed above, under the first *Austin* factor, the district court considers whether the defendant has violated a specific condition of probation. *Austin*, 295 N.W.2d at 250. The district court may find this factor is met only if the state proves the defendant violated a specific condition of probation by clear and convincing evidence. Minn. R. Crim. P. 27.04, subds. 2(1)(c)(b), 3(3); *State v. Johnson*, 679 N.W.2d 169, 177 (Minn. App. 2004).

The clear-and-convincing standard “requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt.” *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (quotation omitted). This “standard is met when the truth of the facts sought to be admitted is highly probable.” *Id.* (quotation omitted). However, criminal charges alone do not constitute clear and convincing evidence of the alleged underlying criminal conduct. *State v. Scholberg*, 393 N.W.2d 247, 249 (Minn. App. 1986) (noting that a criminal charge, even when accompanied by a statement of probable cause, “does not fairly demonstrate an intentional act of the probationer”).

Here, the district court found that the state proved by clear and convincing evidence that Stensrud violated the condition of his probation that required him to remain law abiding when he failed to register as a predatory offender in North Dakota. The district court made this finding orally at the probation-revocation hearing. The district court stated, “[I]n weighing the clear and convincing standard here, [the court does] find that the state has met their burden and has established that Mr. Stensrud did violate his probation, specifically failure to remain law abiding.” The district court explained that its decision was “[b]ased upon the evidence that’s been presented here as the record,” along with “the allegation within the probation violation report.” In a written order that followed for each court file, the district court repeated this finding but did not provide any additional detail.

Stensrud challenges the district court’s finding that he failed to remain law abiding by not registering in North Dakota, arguing that the alleged probation violation is not supported by clear and convincing evidence. Specifically, Stensrud contends that the state “never provided any evidence of what specific provision [of North Dakota law] was

violated and provided no fact witnesses with any knowledge of what Stensrud had or had not done in North Dakota.” On this basis, Stensrud argues the district court abused its discretion when it found that he failed to remain law abiding. We agree.

In deciding to revoke Stensrud’s probation based on his alleged failure to remain law abiding, the district court explained that it was relying on the allegations in the probation-violation report and the testimony at the hearing. The report asserted that Stensrud failed to remain law abiding because he received a charge for felony failure to register as a predatory offender in North Dakota. Specifically, the report states that: “[o]n July 10, 2024, Mr. Stensrud was charged with Felony Failure to Register as a Predatory Offender in Grand Forks County, North Dakota (Case File No. 18-2024-CR-01467); offense date occurred on or around June 20, 2024.” But the report does not identify the North Dakota law that Stensrud allegedly violated. And, as noted, the existence of criminal charges alone does not qualify as clear and convincing evidence that Stensrud committed the charged crime. *See id.*

The district court also stated that it relied on the testimony presented at the probation-revocation hearing to conclude that Stensrud failed to remain law abiding. We recognize that part of the district court’s role as fact-finder in a probation-revocation hearing is to judge the credibility of witnesses, and we defer to the district court’s credibility assessments. *State v. Losh*, 694 N.W.2d 98, 102 (Minn. App. 2005), *aff’d*, 721 N.W.2d 886 (Minn. 2006). Here, however, the testimony does not support the district court’s finding that the state proved by clear and convincing evidence that Stensrud

violated North Dakota's predatory-offender registration requirements—the sole basis for the state's allegation that Stensrud failed to remain law abiding.

The district court heard testimony from Stensrud's probation officers. Probation officer E.R. testified that an investigator from North Dakota told her that Stensrud had been formally charged in North Dakota for failing to register as a predatory offender. E.R. also testified that the investigator provided her with information about North Dakota's registration requirements, but she did not testify to any specific North Dakota law that would require Stensrud to register in North Dakota. Likewise, probation officer A.S. testified generally that she had concerns that Stensrud was not in compliance with North Dakota's registration requirements, but she did not identify any specific law that would require Stensrud to register in North Dakota. And the state did not elicit testimony from the North Dakota investigator referenced by E.R. Nor did the state ever identify any North Dakota statute governing predatory-offender registration that it claims Stensrud violated or present evidence that Stensrud's Minnesota convictions qualify as crimes requiring registration in North Dakota.

Because the probation-revocation record contains no information regarding the specific North Dakota statute at issue, much less evidence showing a violation of a specific North Dakota statute by Stensrud, the record does not support the district court's finding that Stensrud failed to remain law abiding. Without identifying the specific law at issue, there was no basis upon which the district court could conclude that the state established by clear and convincing evidence a violation of North Dakota's predatory-offender registration requirements. We therefore conclude that the district court abused its

discretion when it found that the first *Austin* factor was met based on its finding that Stensrud failed to remain law abiding by not registering in North Dakota as a predatory offender.

To persuade us otherwise, the state argues that Stensrud's probation officers testified about Stensrud's "pattern of frequently moving from location to location" and residing in a hotel while working on a job site in North Dakota. The state maintains that this testimony shows Stensrud was not compliant with the predatory-offender registration requirements of either North Dakota or Minnesota. This argument ignores that, at the probation-revocation hearing, the state did not identify any specific North Dakota statute as the basis for Stensrud's alleged probation violation. Likewise, the district court did not identify any North Dakota statute to support its finding that Stensrud violated North Dakota law by not registering in that state. Additionally, the state's focus on Minnesota law in its appellate brief is unavailing because the probation-violation report did not allege a violation of Minnesota's predatory-offender statute but rather was based on only the charges in North Dakota. Accordingly, we reject the state's arguments on appeal.

In sum, the probation-violation report and the testimony from Stensrud's probation officers are insufficient to show by clear and convincing evidence that Stensrud violated North Dakota's registration requirements. Because the state failed to prove by clear and convincing evidence that Stensrud failed to remain law abiding, the district court abused its discretion by revoking Stensrud's probation on that basis. We therefore reverse and remand to the district court to reinstate Stensrud's probationary status.

Reversed and remanded.