

*This opinion is nonprecedential except as provided by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
A25-2111**

State of Minnesota,
Respondent,

vs.

Jason Clayton Adam Bailey,
Appellant.

**Filed August 10, 2026
Affirmed
Smith, Tracy M., Judge**

Morrison County District Court
File No. 49-CR-21-650

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

Brian Middendorf, Morrison County Attorney, Little Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ede, Presiding Judge; Smith, Tracy M., Judge; and
Beane, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal from the district court's order revoking probation, appellant Jason Clayton Adam Bailey argues that the district court abused its discretion because the need for his confinement did not outweigh the policies favoring continued probation. We affirm.

FACTS

In 2021, Bailey was charged with a first-degree controlled-substance crime for possession of methamphetamine in Morrison County. After his arrest, Bailey entered into a long-term inpatient treatment program. Bailey pleaded guilty to the charge pursuant to a plea agreement. Consistent with the terms of the plea agreement, and following a presentence investigation (PSI), the district court sentenced Bailey to a prison term of 114 months—the top of the presumptive range under the sentencing guidelines—but granted a downward dispositional departure and placed him on 20 years of probation. In granting the departure, the district court cited Bailey’s particular amenability to probation, his successful completion of the long-term treatment program, and the fact that he had established a sober support group and was seeking additional voluntary programming. In 2023, the length of Bailey’s probation was reduced from 20 years to 5 years due to a change in the relevant law.

In September 2025, law enforcement responded to a call at Bailey’s residence in Todd County about an alleged assault. Bailey admitted to law enforcement that he had relapsed. Bailey was arrested and charged with misdemeanor assault and felony fifth-degree drug possession. When he was interviewed at the jail by his probation agent, Bailey signed a drug-use admission form stating that he had used methamphetamine on August 28, 2025. The probation agent filed a violation report alleging that Bailey violated his probation by using methamphetamine.

At a probation-violation hearing that followed in Morrison County, Bailey admitted that he had knowingly used methamphetamine in violation of the term of his probation. A

probation agent testified, recommending that Bailey's probation be revoked. The agent testified that he had not had contact with Bailey in the three years since his conviction. He explained that he was not Bailey's current supervising probation agent but instead was the agent who conducted Bailey's PSI three years earlier and then transferred Bailey's supervision from Morrison County to Todd County, where Bailey resided. He explained that he was testifying because he follows the cases that he transfers. Relying on a report from Bailey's current supervising agent in Todd County, the agent testified:

A: At this time, [Bailey] is not following his sobriety plan. The plan that he went to Minnesota Adult and Teen Challenge for, so he's thus becoming back to being a community safety risk. And as part of our job, we're—community safety is a huge part of our—what we do. So at this time, he's presenting a risk again to the community, so incarceration, at this time, is in the best interest of the community.

Q: How does [Bailey's] using controlled substances negatively impact community safety?

A: You know, other—other criminal activity typically goes with the chemical dependency and the use and the possession.

Q: This is [Bailey's] first violation in this file, correct?

A: Yes.

Q: Does the fact that this is his first violation present any mitigating factors, in your opinion?

A: In my opinion, no. He—he received a very generous dispositional departure downward, which was a huge opportunity to prove a changed lifestyle, and—and, unfortunately, we're—we're here today because of violations on conditions that were imposed on him that he was supposed to follow.

Q.: Is there any less restrictive option that would address community safety?

A: When he was sentenced three years ago, he was given that opportunity, that less restrictive opportunity, and that has not been followed, so that's why we're here today.

Bailey argued that his probation should be continued because, although his relapse was “a serious hiccup on his path to sobriety,” this was his first probation violation and he planned to reenter a six-month treatment program. Bailey submitted a statement explaining that he had experienced significant stressors including that his girlfriend of five years had been seriously ill, his parents had moved out of state, his son had moved in with him, and he had lost connection to his support system.

The district court revoked Bailey's probation and executed his 114-month sentence. This appeal follows.¹

DECISION

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. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). 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). “But [appellate courts] review de novo whether the district court made the required findings to revoke probation.” *State v. Smith*, 994 N.W.2d 317, 320 (Minn. App. 2023) (citing *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005)), *rev. denied* (Minn. Sept. 27, 2023).

¹ Respondent State of Minnesota did not file a brief. We ordered that the case be decided on the merits as provided by Minnesota Rule of Civil Appellate Procedure 142.03.

Before revoking probation, a district court must engage in the three-step analysis outlined in *Austin*, which requires the court to “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.” 295 N.W.2d at 250. To make a finding on the third *Austin* factor, the district court considers the three subfactors outlined in *Modtland*—namely, 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.

Modtland, 695 N.W.2d at 607; *see also Smith*, 994 N.W.2d at 320. “Only one *Modtland* subfactor is necessary to support revocation.” *Smith*, 994 N.W.2d at 320.

“[District] courts 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.” *Modtland*, 695 N.W.2d at 608. “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). Minnesota Statutes section 609.14, subdivision 1(a) (2024), provides that “[r]evocation shall only be used as a last resort when rehabilitation has failed.”

Bailey focuses only on the third *Austin* factor, making three arguments: (1) that the third *Austin* factor was not satisfied because no *Modtland* subfactor was properly found; (2) that revocation was an abuse of discretion because the district court did not find that rehabilitation had failed under section 609.14, subdivision 1(a); and (3) that the district court abused its discretion by relying on testimony from a nonsupervising probation agent. We address each argument in turn.

1. Findings on *Modtland* Subfactors

Bailey contends that the district court made insufficient or unsupported findings on the *Modtland* subfactors. We address each subfactor in turn.

a. Need for Confinement to Protect the Public

Bailey argues that the district court did not find that confinement was necessary to protect the public from further criminal activity under the first *Modtland* subfactor.

At the probation-revocation hearing, the state argued that the confinement was necessary to protect the public from further criminal activity, stating: “[T]his case that brings us here today is defendant’s fourteenth felony conviction. . . . [Bailey] has 12 felony charges in Morrison County alone stemming from 2001 to 2021.” The state further argued that Bailey “has not taken to heart the information that was taught [at] Teen Challenge[,] which puts the safety as risk.” Also at the hearing, the probation officer testified that Bailey was “presenting a risk again to the community” and that Bailey’s use of controlled substances negatively impacted community safety because “other criminal activity typically goes with the chemical dependency and the use and the possession.”

After taking a recess near the end of the revocation hearing, the district court announced that it would revoke Bailey's probation and stated, in relevant part:

So, I took a break to be sure that I wasn't issuing an order that was not balanced with [Bailey's] interest and freedom and rehabilitation, but that it also reflected public safety decisions but not of a reflexive nature, not some accumulation of technical violations. He just can't be counted on to avoid antisocial behavior, and that's unfortunate, but that's part of what I encounter.

Though the district court did not explicitly state that confinement was necessary to protect the public from further criminal activity, it did address the threat that Bailey posed of engaging in further antisocial behavior. But we need not decide whether the district court's determination on the first *Modtland* subfactor is sufficient if the district court's rulings on the second or third subfactor are proper. We turn to those subfactors.

b. Treatment Most Effectively Provided in a Correctional Setting

The district court expressly found that Bailey was in need of treatment that could most effectively be provided in a correctional setting under the second *Modtland* subfactor.

Bailey challenges the finding. He argues that there are "significant mitigating factors" in favor of reinstating probation, which weighed against finding that confinement was necessary. And he contends that the district court's finding is not supported by the record because Bailey was prepared to receive treatment in the community at Minnesota Adult and Teen Challenge, where he had previously been successful.

At the revocation hearing, the state argued that the second *Modtland* factor was met because Bailey had "a history of being unable to maintain sobriety in the community" and "community programming will not successfully help him in that area."

In explaining its revocation decision, the district court stated, in relevant part:

Well, by my assessment here, even though he's been apparently successful for quite a time on probation, we're again back to where we started with the same behaviors of use, lack of support, and then hiding those behaviors, not—he didn't come to the agent seeking help. He didn't come to make an admission. Ultimately, he provided an admission, but that's when he was confronted with the facts.

. . . .

But the fact that he's unable or unwilling to maintain sobriety after the 13-month Teen Challenge program and after other significant portions of probation where he was sober tells me that he's making intentional decisions that require confinement. It's necessary to confine him to stop the behavior, because he won't. I'm not going to say can't. I'm going to say won't stop it on his own, and he certainly is in need of correctional treatment or correction that could only be provided by incarceration

We conclude that the district court's findings sufficiently explain why effective treatment can only be provided by incarceration and that the findings are supported by the record. Bailey had participated in a 13-month treatment program, but it was ultimately ineffective. He started using methamphetamine again and did not come forward for help with his relapse but instead admitted use only when he had an incident that led to law enforcement involvement.

Bailey contends that the district court was required to determine that Bailey “had exhausted the community options available to him.” But this argument overstates the requirements laid out in *Austin*. The supreme court stated in *Austin* that “[t]he purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed.” *Austin*, 295 N.W.2d at 250. Whether treatment has “failed” is not the

same question as whether all community options have been exhausted. Moreover, the *Austin* court explained that revocation should be a “last resort” within the context of its overall discussion of the third factor. *Id.* The district court here made sufficient findings that treatment had failed and revocation was appropriate under the third *Austin* factor.

To convince us otherwise, Bailey cites two nonprecedential opinions, *State v. Sayers*, No. A15-1345, 2016 WL 1619389 (Minn. App. Apr. 25, 2016), and *State v. Stradtman*, No. A19-1322, 2020 WL 1845512 (Minn. App. Apr. 13, 2020).

In *Sayers*, this court reversed a probation revocation, noting that the district court “did not explicitly consider any of the three subfactors, did not make any findings on the policies favoring probation, and did not make an explicit finding as to whether the need for Sayers’s confinement outweighed the strong policies favoring probation.” 2016 WL 1619389, at *3.² We held that findings that relate generally to the need to confine are “only part of the necessary analysis” and that “*Austin* requires the district court to go further and weigh that need against the policies in favor of probation. . . . including rehabilitation and whether treatment has failed.” *Id.* Here, unlike in *Sayers*, the district court did make findings that treatment had failed, stating that Bailey was “unable or unwilling to maintain sobriety after the 13-month Teen Challenge program and after other significant portions of probation.” *Sayers* is not persuasive here.

In *Stradtman*, we reversed a probation revocation when the district court had essentially recited the *Austin* factors without explaining how it decided that treatment in

² Nonprecedential opinions are not binding but may be cited for their persuasive value. *See Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800-01 (Minn. App. 1993).

confinement was best when the appellant had never been required to participate in any community-based treatment. 2020 WL 1845512, at *3-4. Here, unlike the appellant in *Stradtman*, Bailey had previously participated in community-based treatment and the district court had a basis for comparing Bailey's treatment options. The district court recognized that Bailey appeared to have been successful for nearly three years on probation after completing the 13-month program but nevertheless relapsed. The district court therefore had a basis for concluding that Bailey had a need for confinement in a correctional setting.

We see no abuse of discretion in the district court's determination that the second *Modtland* subfactor was met.

c. Depreciation of the Seriousness of the Violation

Bailey also argues that the record does not support the district court's determination that not revoking probation would unduly depreciate the seriousness of the violation under the third *Modtland* subfactor. He further argues that the district court "used the incorrect legal standard" by considering Bailey's underlying conviction rather than just his probation violation. At the hearing, the state argued that reinstating Bailey on probation would "undermine the departure that he was given in this case" and would "generally undermine the seriousness of charges like this and the specificity of downward departures and that impact for community safety . . . in general."

In explaining its revocation decision, the district court stated, in relevant part:

[D]espite all those signals and things that were provided in the tools, training, camaraderie, coaching, correction of Teen Challenge, they weren't put into action. I understand it's a first

violation, but this—as [counsel for the state] had said, it goes to the heart of this violation as a controlled substance offense, and the most serious controlled substance offense that we have in the State of Minnesota. First degree. . . . I’m going to say [he] won’t stop it on his own, and he certainly is in need of correctional treatment or correction that could only be provided by incarceration, and I have to state with emphasis that not to do so—to not execute the sentence here would unduly depreciate the seriousness of the violation and this offense itself and perhaps others.

In a previous nonprecedential but persuasive opinion, we held that, so long as a district court does not revoke probation “based on the seriousness of [the] underlying crime alone, the district court did not misapply the law.” *State v. Flowers*, No. A25-0992, 2026 WL 263285, at *3 (Minn. App. Feb. 2, 2026). In addition, we have held that a district court may “consider[] its grant of a downward dispositional departure when deciding whether to revoke probation.” *State v. Fleming*, 869 N.W.2d 319, 331 (Minn. App. 2015), *aff’d*, 883 N.W.2d 790 (Minn. 2016).

Here, even if the district court referenced Bailey’s 2021 offense, it also referenced the seriousness of the probation violation. It noted that Bailey hid his violative behaviors, did not seek help from his probation agent, and did not make an admission prior to being caught. Additionally, the district court’s discussion of the seriousness of Bailey’s drug offense seemed to be in reference to the fact that Bailey received a downward-dispositional departure from a presumptive executed sentence for a serious drug crime and was provided the tools for rehabilitation. The district court’s determination that not revoking probation would depreciate the seriousness of the violation is sufficient under the third *Modtland* subfactor and is supported by the record.

In sum, the district court made sufficient findings, supported by the record, on at least two of the *Modtland* subfactors that establish the third *Austin* finding that the need for confinement outweighed the policies favoring probation. *See Smith*, 994 N.W.2d at 320.

2. Minnesota Statutes section 609.14, subdivision 1(a)

Bailey also argues that the district court abused its discretion because it did not find that all attempts at rehabilitation, as opposed to just treatment, had failed and that the evidence in the record does not support such a finding.

The supreme court in *Austin* stated that “the purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed.” 295 N.W.2d at 250. In 2023, the Minnesota Legislature amended Minnesota Statutes section 609.14, subdivision 1(a), to add the following language: “Revocation shall only be used as a last resort when rehabilitation has failed.” 2023 Minn. Laws ch. 52, art. 17, § 32. Bailey argues this statutory language requires a district court to find that “all attempts to rehabilitate the defendant have failed” before it may revoke probation. He contends that the statute imposes “an additional fact-finding requirement that is independent of the *Austin* findings.” But we recently held that the standard articulated in section 609.14, subdivision 1(a), “does not create a new standard for the revocation of probation” requiring findings beyond those already required by existing caselaw. *State v. Eastman*, 29 N.W.3d 741, 750 (Minn. App. 2025), *rev. granted* (Minn. Feb. 18, 2026). Bailey’s argument is therefore unavailing.

3. The district court did not abuse its discretion by crediting the testimony of a probation agent who did not supervise Bailey.

Bailey argues that the district court abused its discretion by crediting the testimony of the state's sole witness—appellant's original Morrison County probation officer—because that probation officer did not supervise Bailey during his probation and thus “had no knowledge of how Bailey had conducted himself over the past three years on probation.”

We addressed a similar factual situation in another probation-revocation case, *State v. Johnson*, 679 N.W.2d 169 (Minn. App. 2004). In that case, the state presented testimony from the original probation officer in the county of conviction and introduced into evidence a letter from the appellant's supervising probation officer in the county of residence to which the appellant's supervision had been transferred. *Johnson*, 679 N.W.2d at 174-75. That letter was the basis for finding that the appellant had violated the terms of his probation. *Id.* at 174. The appellant's arguments in *Johnson* focused on whether the letter was inadmissible hearsay (an assertion that we rejected), *id.*, but our reasoning in that case is instructive here. We observed that the rules of evidence generally do not apply in probation-revocation proceedings and concluded that, when the defendant has had the opportunity to present evidence in a revocation hearing, the district court may admit and rely on hearsay information provided by another probation officer. *Id.* The same logic applies here. The agent who testified here had conducted Bailey's PSI three years earlier, and, as the basis for his testimony, he relied on his knowledge of Bailey's PSI as well as a report written by Bailey's current supervising agent. Bailey had the opportunity to present

evidence to counter the agent's testimony. As a result, we see no abuse of discretion in the district court's crediting of that testimony.

Affirmed.