

*This opinion is nonprecedential except as provided by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
A24-1147**

State of Minnesota,
Respondent,

vs.

Devin Kendal Zitzloff,
Appellant.

**Filed April 14, 2025
Affirmed
Slieter, Judge**

Meeker County District Court
File No. 47-CR-22-101

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

Rebecca M. Rue, Litchfield City Attorney, Wood & Rue, Litchfield, Minnesota (for respondent)

John E. Mack, New London Law, P.A., New London, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Slieter, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant challenges the district court's order revoking his probation and executing his sentence. He argues that the district court inadequately considered the *Austin* factors before revoking his probation. Because the district court adequately considered the *Austin*

factors, it acted within its discretion to revoke appellant's probation and execute the sentence. We affirm.

FACTS

Respondent State of Minnesota charged appellant Devin Kendal Zitzloff with third-degree driving under the influence (DUI) in violation of Minn. Stat. § 169A.20, subd. 1(5) (2020). Zitzloff pleaded guilty to the offense, and the district court sentenced him to 330 days stayed for two years of probation. In April 2024, following Zitzloff's admission to a third violation of probation, the district court extended Zitzloff's probation one year and ordered him to complete an inpatient treatment program at Minnesota Adult and Teen Challenge (Teen Challenge).

In June 2024, Teen Challenge discharged Zitzloff from the program for possessing two prohibited items: a cell phone and a vape pipe. Zitzloff's probation officer was informed of the rule violations and Zitzloff was apprehended by law enforcement and transported to the Meeker County jail. During a revocation hearing on the probation violation, Zitzloff admitted to violating a condition of his probation by failing to complete the Teen Challenge chemical dependency (CD) treatment program. The district court accepted his admission, revoked probation, and executed the remaining stayed sentence.

Zitzloff appeals.

DECISION

Before revoking a defendant's probation, 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.” *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). These findings are commonly known as the *Austin* factors. In making these findings, the district court “must seek to convey [its] substantive reasons for revocation and the evidence relied upon.” *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005).

Further, in determining whether the third *Austin* factor is met, district courts must consider three 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.* at 607. These are known as the *Modtland* subfactors. *State v. Smith*, 994 N.W.2d 317, 320 (Minn. App. 2023), *rev. denied* (Minn. Sept. 27, 2023). A district court need only find that one of the *Modtland* subfactors favors confinement for the third *Austin* factor to be satisfied. *Id.* (“Only one *Modtland* subfactor is necessary to support revocation.”).

We review a district court’s decision to revoke probation for an abuse of discretion. *Modtland*, 695 N.W.2d at 605. But whether a district court made the required *Austin* findings is a question of law that we review *de novo*. *Id.*

Zitzloff first challenges the district court’s determination of the second *Austin* factor—whether the violation was intentional or inexcusable. Zitzloff admitted to violating probation by being discharged from treatment for failing to comply with the rules of the program.

The following colloquy occurred between the district court and Zitzloff:

Q: Was one of the terms and conditions of probation -- I'm looking for the specific condition fifteen. Was the specific term and condition of probation -- did that include that you follow all recommendations of your Chemical Use Assessment?

A: Yes, Your Honor.

Q: And you were aware of that condition. Is that correct?

A: Yes, Your Honor.

Q: And what happened that constitutes a violation? What did you do?

A: I went against the rules and guidelines that were at that facility.

Q: And is that Minnesota Adult and Teen Challenge?

A: Yes, Your Honor.

Q: Okay. Did that result in your dis -- unsuccessful discharge from that program?

A: Yes, it did.

Q: And was that on or about June 10th or so?

A: (inaudible) I believe so, yes.

Q: What did you do to violate the rules?

A: I -- once I got, ahh, caught with a cell phone and a vape -- a nicotine vape -- and I was writing a letter to a lawyer, out and about, about my situation and whatnot, and I didn't get a chance to finish that because I got caught with my cell phone, uhm, the cell phone. Uhm, same with the vape -- the nicotine vape pen. And then was placed under arrest by authority at the facility.

Based upon Zitzloff's admission, the district court found that his violation was intentional or inexcusable in satisfaction of the second *Austin* factor.

Zitzloff also challenges the district court's analysis of the *Modtland* subfactors. Because only one subfactor is necessary to support revocation, *Smith*, 994 N.W.2d at 320, we start and end our analysis with the third *Modtland* subfactor—whether it would unduly

depreciate the seriousness of the violation if probation were not revoked. *Modtland*, 695 N.W.2d at 607.

When analyzing this subfactor the district court stated:

[I]t would unduly depreciate the seriousness of the violation if probation is not revoked. Specifically, because Mr. Zitzloff has had this -- is his fourth violation, because there was an attempt of three different inpatient CD programs and two different outpatient CD programs, and apparently being offered a third more intensive outpatient CD program. It's just not reasonable to permit Mr. Zitzloff to have another opportunity.

The district court determined that reinstating Zitzloff's probation would unduly depreciate the seriousness of the violation.

A careful review of the record supports the district court's findings regarding the third *Modtland* subfactor. Zitzloff has attended, but never completed, five CD treatment programs—two outpatient and three inpatient. The district court granted an extension of Zitzloff's probation following his third probation violation specifically to allow him another attempt to successfully complete a treatment program. Less than two months following that extension, Zitzloff was unsuccessfully discharged from that program. The record amply supports the district court's determination that failing to revoke probation would depreciate the seriousness of Zitzloff's violation.

In sum, because the record supports the district court's consideration of the *Austin* factors, including at least one *Modtland* subfactor, we conclude that the district court acted within its discretion by revoking Zitzloff's probation and executing his sentence.

Affirmed.