

*This opinion is nonprecedential except as provided by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**

A24-0998

A24-1145

A24-1146

State of Minnesota,
Respondent,

vs.

Cory Donovan Dodge,
Appellant.

Filed April 28, 2025
Affirmed
Cochran, Judge

Stearns County District Court
File Nos. 73-CR-22-9133, 73-CR-22-5480

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

Janelle P. Kendall, Stearns County Attorney, River D. Thelen, Assistant County Attorney,
St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In these consolidated appeals, appellant challenges the district court's orders
revoking his probation and executing his prison sentences. Appellant argues that the

district court abused its discretion when it determined that the need to confine appellant outweighed the policies favoring probation. Because the district court did not abuse its discretion, we affirm.

FACTS

In July 2022, respondent State of Minnesota charged appellant Cory Donovan Dodge with felony threats of violence pursuant to Minnesota Statutes section 609.713, subdivision 1 (2020), in case file 73-CR-22-5480. Dodge pleaded guilty to the charged offense, pursuant to a plea agreement with the state under which he would receive a stay of execution and be placed on probation. Dodge was released pending sentencing, subject to conditions. Before Dodge was sentenced, the state arrested and charged Dodge with two counts of felony fifth-degree assault pursuant to Minnesota Statutes section 609.224, subdivision 4(b) (2022), in case file 73-CR-22-9133. The state also filed a violation report of Dodge's pretrial conditional release in the 5480 file. The district court set conditional bail for Dodge's assault charges.

In November 2022, before Dodge entered a plea on the assault charges, his attorney informed the district court that Dodge was determined to be incompetent to proceed on a separate charge in another county. The district court requested the competency evaluation supporting the finding. Based on the evaluation, the district court determined that Dodge was incompetent to proceed in the 5480 and 9133 files. As a result of this determination, the district court entered an order requiring the state to screen Dodge for civil commitment. A month later, the district court civilly committed Dodge, determining that he was

“mentally ill and has chemical dependency.” As a result of his civil commitment, Dodge was placed in the Anoka Metro Regional Treatment Center—a secure treatment facility.

In October 2023, the district court determined that Dodge was competent to proceed in both case files, 5480 and 9133, based on a forensic evaluation report filed with the court. The district court subsequently sentenced Dodge to 24 months’ imprisonment stayed for five years on the threats-of-violence charge in the 5480 file and placed Dodge on probation. In April 2024, in the 9133 file, Dodge entered a guilty plea to one count of felony assault and in exchange the state agreed to dismiss the other count. At the sentencing hearing in that case file, Dodge argued for a dispositional departure. The district court granted Dodge’s motion, sentencing him to 28 months’ imprisonment stayed for five years and placing him on probation.

Both probationary sentences required that Dodge follow certain conditions. Relevant to this appeal, both sentences required that Dodge follow all instructions of probation, take all medication in the prescribed dosage and frequency, and sign releases of information as directed. For the threats-of-violence conviction, Dodge was to “[f]ollow all recommendations of mental health practitioners and doctors.” For Dodge’s assault conviction, Dodge was to “follow all recommendations from his civil commitment social worker.”

In April 2024, community corrections filed reports in both case files alleging that Dodge had violated his conditions of probation. For the threats-of-violence conviction, the probation agent alleged that Dodge had failed to take his medications starting in January 2024 and failed to follow the recommendations of his mental-health practitioners and

doctors. For the assault conviction, the probation agent alleged that Dodge refused to sign releases of information and failed to follow the recommendations of his civil commitment social worker and the instructions of probation. For both violations, the probation agent asserted that Dodge was instructed to complete a 90-day program but “[d]ue to disruptive behavior [Dodge] was transferred to the Anoka Hospital” on February 7, 2024. Dodge entered a denial to the violations, and the district court set a contested probation-revocation hearing for the alleged violations in both case files.

At the hearing, Dodge admitted to the probation violations alleged by the probation agent. As a result, the district court found that Dodge had violated his conditions of probation and that the violations were “intentional and inexcusable.” The district court then turned to the question of disposition.

The sole witness regarding disposition was Dodge’s probation agent. The probation agent had a specialized caseload focused on individuals with mental illness. Dodge was a part of this caseload, and the probation agent had worked with Dodge on several casefiles on and off since 2018. Relevant to the probation violations at issue here, the probation agent testified that when Dodge arrived at the Anoka facility in February 2024, Dodge stabilized after he began to consistently take his medications. But then Dodge’s antisocial and disruptive behaviors increased. The probation agent testified that when he asked professionals at the Anoka facility if Dodge’s increase in antisocial behavior was due to mental-health issues, the professionals stated, “No. He has been stable for quite some time. We have his medications figured out. This is not mental health This is criminal

behavior.” The probation agent also testified that when he tried to speak with Dodge about his concerns, Dodge “shut down” and told him “[f]or the fifteenth time just put me to jail.”

According to the probation agent, the Anoka facility eventually discharged Dodge because Dodge no longer required the level of care provided at the facility. At that point, the probation officer filed a probation-violation report and requested a warrant to take Dodge into custody. According to the probation agent, the Anoka facility had hoped to discharge Dodge to another program to address Dodge’s chemical-dependency issues, but that program would not admit him because of his behavioral issues. And the probation agent testified that he was unaware of any other secure community treatment facility that would be willing to admit him.

The probation agent told the district court that he believed Dodge would pose a risk to public safety if released into the community and that Dodge “is really not [amenable] to probation.” The probation agent did not think there was any other option other than to execute Dodge’s prison sentences because “[w]e have exhausted all of the possible options for him outside of the prison setting.”

Based on the probation agent’s testimony, the state requested that the district court revoke Dodge’s probation and execute his stayed prison sentences. The state argued that Dodge was not amenable to probation because of his ongoing aggressive and uncooperative behaviors while at the Anoka facility. The state acknowledged that Dodge has had mental-health issues in the past but noted that “[w]e are still seeing instances where [Dodge] is uncooperative with treatment and aggressive towards staff.” The state argued that “there

is not an adequate place for him in the community that is able to take him and protect public safety.”

Dodge requested that the district court continue his probation and not execute his prison sentences so that he could locate other treatment options. Dodge argued that his conduct is largely the manifestation of his mental illness and chemical dependency. Dodge noted that he was under civil commitment and asserted that he would not be able to receive needed services in prison.

The district court revoked Dodge’s probation and executed his prison sentences for threats of violence and felony assault in the 5480 and 9133 files, stating that confinement was “necessary to protect the public from further criminal activity.” In doing so, the district court expressly credited the probation agent’s testimony that there were no viable treatment-program options in the community for Dodge. The district court further credited the probation agent’s testimony that Dodge was engaging in antisocial behaviors that were not the result of mental illness. And the district court noted that, while this was Dodge’s first probation violation for the convictions at issue, Dodge had multiple probation violations in other felony cases. As a result, the district court determined that confinement was necessary to protect the public.

Dodge appeals from the revocation of his probation in both case files.¹

¹ This consolidated appeal encompasses three separate appeals filed by Dodge: two of the appeals challenge the revocation of his probation in the 5480 and 9133 files and one appeal is from the judgment of conviction in the 9133 file. Dodge moved to consolidate all three appeals. We granted the motion by an order dated July 26, 2024. However, in his consolidated brief, Dodge argues only that the district court abused its discretion when it revoked his probation and does not argue that we should reverse his conviction in the 9133

DECISION

We review the district court’s decision to revoke probation for an abuse of discretion. *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). 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. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005). “A district court abuses its discretion when it has exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings.” *Martin v. State*, 969 N.W.2d 361, 363 (Minn. 2022) (quotation omitted).

When a district court finds a probation violation has occurred, the district court has the discretion to continue the probationer on probation, impose an intermediate sanction, or revoke probation and execute the stayed sentence. Minn. Stat. § 609.14, subd. 3(1) (2022); Minn. R. Crim. P. 27.04, subd. 3(2)(b)(iv)-(v). Revoking probation requires “a balancing of the probationer’s interest in freedom and the state’s interest in insuring his rehabilitation and the public safety.” *Austin*, 295 N.W.2d at 250 (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 785 (1973)). Consequently, before revoking probation, the district court must find that (1) the probationer violated at least one specific condition of probation; (2) “the violation was intentional or inexcusable;” and (3) the “need for confinement

file. Accordingly, we conclude that Dodge has waived any argument as to the reversal of his conviction in the 9133 file. *See State v. Butcher*, 563 N.W.2d 776, 780 (Minn. 1997) (holding that issues not briefed are waived).

outweighs the policies favoring probation.” *Id.* These findings are commonly known as the *Austin* factors.

In making findings on the *Austin* factors, a district court “must seek to convey [its] substantive reasons for revocation and the evidence relied upon.” *Modtland*, 695 N.W.2d at 608. The district court’s decision to revoke probation “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). In addition, revocation of probation “should be used only as a last resort when treatment has failed” and, “[i]n some cases, policy considerations may require that probation not be revoked even though the facts may allow it.” *Id.* at 250.

Dodge does not challenge the district court’s findings on the first two *Austin* factors. Instead, Dodge limits his argument to the third *Austin* factor, arguing that the district court abused its discretion when it found that the need for confinement outweighs the policies favoring probation.

In determining whether the third *Austin* factor is met, a district court considers the following “*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.” *Modtland*, 695 N.W.2d at 607 (quoting *Austin*, 295 N.W.2d at 251). The third *Austin* factor is met if the district court finds that any *one* of the *Modtland* subfactors is satisfied. *See id.*; *see also Goldman v. Greenwood*, 748 N.W.2d 279, 283 (Minn. 2008) (explaining that

“we normally interpret the conjunction ‘or’ as disjunctive rather than conjunctive”). Here, the district court found that the need for confinement outweighs the policies favoring probation because “confinement at this time is necessary to protect the public from further criminal activity.”

Dodge argues that the district court abused its discretion in finding that the third *Austin* factor is met. But, in making his argument, Dodge does not specifically challenge the district court’s finding on the first *Modtland* subfactor. Instead, Dodge argues that “the record does not support that rehabilitating [Dodge] was no longer possible as intermediate sanctions short of revocation were still available.” Dodge argues that rather than revoking his probation, the district court should have ordered the intermediate sanction of incarcerating Dodge at a local jail. This argument is unavailing.

The district court “has broad discretion in determining whether to impose an intermediate sanction.” *State v. Cottew*, 746 N.W.2d 632, 638 (Minn. 2008). Dodge fails to demonstrate an abuse of discretion by the district court in declining to impose his proposed intermediate sanction.

Dodge contends that he should have been allowed to remain at the local jail until his behaviors improved so that he could be admitted back to his prior chemical-dependency treatment program. But the probation agent testified that Dodge’s “mental health has been stabilized through his time at Anoka” and that his behaviors were not a result of mental health concerns. The probation agent further testified that Dodge’s prior chemical-dependency treatment program would not take him back. The probation agent also stated that there were no other treatment options available for Dodge outside the prison system.

Without the availability of a suitable chemical-dependency treatment program, it is unclear how incarceration at a local jail would further the rehabilitative goals of intermediate sanctions. *See id.* at 637-38. And Dodge proposes no end date for his incarceration at a local jail short of locating a suitable treatment program that probation has been unable to identify because of his conduct. Thus, considering the district court's broad discretion in deciding whether to order intermediate sanctions, the district court did not abuse its discretion when it decided not to order Dodge's proposed intermediate sanction. *See id.* at 638.

Additionally, the record amply supports the district court's finding that the third *Austin* factor is met because confinement of Dodge is necessary to protect the public from further criminal activity. Dodge has a significant criminal history, some of which, including the offenses at issue here, are violent felonies. Dodge's probation agent testified that Dodge continues to engage in antisocial, unsafe conduct and that his behaviors are not related to mental illness. And, while Dodge argues that his conduct was a manifestation of his mental illness, the record refutes this contention. Dodge's probation agent testified that he inquired with professionals at the Anoka facility about Dodge's conduct and they told him: "This is not mental health This is criminal behavior." In sum, the record supports the district court's determination that confinement is necessary to protect the public from further criminal activity and therefore the third *Austin* factor is met. Accordingly, we conclude that the district court did not abuse its discretion when it revoked Dodge's probation and executed his sentence.

Affirmed.