

*This opinion is nonprecedential except as provided by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
A24-1467**

State of Minnesota,
Respondent,

vs.

Timothy Patrick Cook,
Appellant.

**Filed May 19, 2025
Affirmed
Reyes, Judge**

Douglas County District Court
File Nos. 21-CR-23-786, 21-CR-24-82

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

Chad Larson, Douglas County Attorney, Alexandria, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Max B. Kittel, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bond, Presiding Judge; Reyes, Judge; and Klaphake,
Judge.*

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

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues that the district court abused its discretion when it revoked his probation by (1) finding that he violated a condition of his probation and (2) improperly weighing whether the need for confinement outweighed the policies favoring probation. We affirm.

FACTS

Respondent State of Minnesota charged appellant Timothy Patrick Cook with felony drug charges in May 2023 for possessing methamphetamine and narcotics. While on pretrial conditional release for these charges, he incurred new drug charges in January 2024 for possessing methamphetamine and cocaine.

In April 2024, the parties informed the district court of a plea deal in which appellant agreed to plead guilty to felony fifth-degree controlled-substance crime—methamphetamine possession in excess of 0.25 grams (count II) in district court file 21-CR-23-786 and the same charge (count I) in district court file 21-CR-24-82. In exchange, the state agreed to dismiss the other charges from both files, in addition to dismissing new charges from a third file.

At a sentencing hearing in May 2024, the district court imposed stayed sentences of 19 months on counts I and II, to run concurrently, and placed appellant on probation for five years with certain conditions.

Prior to sentencing, appellant began inpatient treatment. One of the conditions of appellant's probation was that he complete treatment and follow aftercare

recommendations. Treatment staff recommended that he enter a sober-living house after completing inpatient treatment. His treatment facility made arrangements for appellant to enter a sober-living house in Little Falls. However, after completing inpatient treatment, appellant never reported to sober living and instead began heavy drug use and never contacted his probation officer. The Department of Corrections filed a probation-violation report on May 24, 2024, and two separate addendums on May 28 and June 3.

Officers eventually took appellant into custody. At a probation-violation hearing, appellant admitted to two probation violations; namely, that he failed to stay in contact with his probation agent and that he ingested a significant amount of chemical substances. At his revocation hearing, appellant argued that he should be reinstated on probation. The district court revoked appellant's probation and imposed concurrent 19-month sentences on counts I and II. This appeal follows.

DECISION

Appellant argues that the district court abused its discretion when it revoked his probation because it made erroneous or insufficient findings on the first and third *Austin* factors. We address each in turn.

Before a district court can revoke probation, it must (1) “designate the specific condition or conditions that were violated”; (2) “find that the violation was intentional or inexcusable”; and (3) “find that [the] need for confinement outweighs the policies favoring probation.” *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980) (the *Austin* factors). 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.” *Id.* 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.” *See State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013) (describing standard in relation to postconviction proceedings). A district court “must make specific findings on all three *Austin* factors before revoking probation,” *State v. Cottew*, 746 N.W.2d 632, 637 (Minn. 2008), and should “not assume that [it has] satisfied *Austin* by reciting the three factors and offering general, non-specific reasons for revocation,” *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005). Appellate courts review whether the district court made the required *Austin* findings de novo. *Modtland*, 695 N.W.2d at 605.

I. The record supports the district court’s finding that appellant violated specific conditions of probation.

Appellant argues that the district court made insufficient findings on the first *Austin* factor and revoked his probation “on a clearly erroneous and unproven finding of violation.” While we agree with appellant that the district court erred, we disagree that its error requires us to reverse the district court’s decision revoking his probation.

The district court imposed several conditions on appellant while on probation, including, among others, maintaining contact with his probation officer, not ingesting mood-altering chemicals, and completing treatment and following aftercare recommendations. At appellant’s probation-revocation hearing, the district court identified three conditions that appellant violated: (1) failing to remain in contact with his probation agent; (2) ingesting a significant amount of chemical substances “such that [he] overdosed

or at least experienced symptoms of overdosing”; and (3) failing “to follow the recommendations of the treatment program.”

Appellant explicitly admitted to only two of these violations, that he failed to keep in contact with his probation agent and that he failed to abstain from mood-altering substances. The district court therefore erred when it found that appellant failed to follow the recommendations of the treatment program because he never admitted this violation and the state did not present evidence to support this violation. In fact, when questioned by the district court about whether it intended to pursue all three violations against appellant, the state did not indicate that it intended to pursue more than the two violations to which appellant admitted. However, because the district court validly found appellant in violation of the conditions to which he admitted, we consider the district court’s application of the third *Austin* factor in light of this error before determining whether appellant is entitled to relief.¹ And because, as explained below, the district court’s decision to revoke appellant’s probation was based solely upon his conduct underlying the two admitted violations, we conclude that the district court’s erroneous finding of violation does not compel reversal of the district court’s revocation decision.

¹ See *State v. Trott*, Nos. A18-1995, A19-0015, 2019 WL 3886915, at *3 (Minn. App. Aug. 19, 2019) (explaining that, although record does not support district court’s determination with respect to violation of one condition, it was proper to consider third *Austin* factor because record supported district court’s determination regarding violation of another condition). While “[n]onprecedential opinions . . . are not binding authority . . . [they] may be cited as persuasive authority. Minn. R. Civ. App. P. 136.01, subd. 1(c).

II. The district court properly analyzed the third *Austin* factor.

Appellant argues that the district court made insufficient findings on the third *Austin* factor because it provided “no more than a general, nonspecific recitation of the factors” to revoke probation rather than “offering [appellant] another opportunity to comply with a long-term inpatient treatment program.” We disagree.

To satisfy the third *Austin* factor, district courts must “balance the probationer’s interest in freedom and the state’s interest in insuring [their] rehabilitation and the public safety.” *Modtland*, 695 N.W.2d at 607 (quotation omitted). In making this determination, district courts should consider 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.” *Id.* (the *Modtland* subfactors). “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).

Contrary to appellant’s argument, the district court, in its own words, made specific findings under the first and third subfactors to support its revocation determination. On the first subfactor, which the district court did not expressly reference, it noted that “the public safety risk just increases dramatically” given that, immediately after appellant completed treatment, he resumed heavy drug use. It also acknowledged his history of violating conditions of probation and serving jail time as a result. On the third subfactor, the district court noted that granting appellant’s request to be placed back on probation,

given his extensive criminal record and history of violating probation, as well as the fact that he violated probation here almost immediately after leaving inpatient treatment, would not allow him to “experience the full breadth of the consequences” of his actions.

Based on these findings, which notably did *not* directly touch on appellant’s failure to follow the recommendations of his treatment program, the district court determined that “the grounds for revoking your probation and executing the sentence . . . are more than amply demonstrated under the circumstances.” And the district court decided that it would “not . . . grant the request to place [appellant] back on probation.” The record shows that the district court based its decision to revoke appellant’s probation solely on his drug use and his failure to remain in contact with his probation agent.

We conclude that, because the district court made adequate findings under both the first and third *Modtland* subfactors and did not rely on the erroneously found violation, it did not abuse its discretion by revoking appellant’s probation.

Affirmed.