STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1533

In the Matter of the Welfare of: A. J. P., Child.

Filed June 16, 2025
Affirmed
Smith, Tracy M., Judge
Dissenting, Johnson, Judge

Dakota County District Court
File Nos. 19HA-JV-21-912, 19HA-CR-24-1285

Cathryn Middlebrook, Chief Appellate Public Defender, Laura G. Heinrich, Assistant Public Defender, St. Paul, Minnesota (for appellant A.J.P.)

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

Kathryn M. Keena, Dakota County Attorney, Elizabeth Swank, Assistant County Attorney, Hastings, Minnesota (for respondent State of Minnesota)

Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal from an order revoking extended-juvenile-jurisdiction (EJJ) status and probation and executing an 86-month prison sentence, appellant A.J.P. argues that the district court abused its discretion because its findings on all three *Austin* factors are not supported by clear and convincing evidence. We conclude that the district court's findings are supported by clear and convincing evidence and that the district court therefore did not

abuse its discretion. Accordingly, we affirm the district court's probation revocation and execution of the stayed sentence.

FACTS

On January 27, 2021, A.J.P. and a friend made a plan to take Percocet pills together. A.J.P. contacted his "plug," or dealer, to get the pills. A.J.P. brought the pills to his friend's house, where the two each took one-half of a pill. About 15 minutes later, A.J.P.'s friend consumed another half pill. Shortly after, A.J.P. left his friend's house. The next day, A.J.P. learned that his friend had died during the night. The pills turned out to be laced with fentanyl, and the friend died from fentanyl toxicity resulting in positional asphyxia.

In November 2021, the state filed a petition in Dakota County juvenile court charging A.J.P. with murder in the third degree, in violation of Minn. Stat. § 609.195(b) (2020). The state filed a motion for adult certification.

On January 6, 2022, the day of the adult-certification trial, A.J.P. pleaded guilty to murder in the third degree pursuant to a plea agreement. The parties agreed that A.J.P. would be sentenced under the extended juvenile jurisdiction of the district court, with a stay of an 86-month prison sentence until A.J.P.'s 21st birthday in June 2025. The district court adjudicated A.J.P. delinquent and imposed the agreed-upon sentence. The district court also imposed conditions such as completing treatment at Hazelden, refraining from using or possessing alcohol or unprescribed substances, and taking all prescribed medications.

A.J.P.'s first probation violation occurred during April and May 2023. A.J.P. had moved out of a sober-living home in mid-April and stopped showing up for outpatient

treatment at Nuway. A.J.P.'s probation officer requested a urinalysis (UA). A.J.P. first attempted to provide fake urine, then gave a proper sample and admitted to using fentanyl and marijuana. On May 1, A.J.P. returned to Nuway for outpatient treatment. At Nuway on May 11, A.J.P. tested positive for marijuana and fentanyl. Nuway warned A.J.P. that he could not have any more positive UAs and needed to be on time for treatment every day. The next day, A.J.P. was two hours late to treatment. A.J.P. was unsuccessfully discharged from Nuway on May 12, 2023.

The hearing for the first probation violation took place on May 23, 2023. A.J.P. admitted to the violation, and the district court ordered A.J.P. to complete an updated chemical-dependency evaluation and a 90-day program at the Dakota County Juvenile Service Center (JSC). In August 2023, based on the recommendation of Dakota County Community Corrections, the district court ordered that A.J.P. transition to Frazier sober living and intensive outpatient treatment after completing the JSC program.

A.J.P.'s second probation violation occurred in December 2023. Frazier informed A.J.P.'s probation officer that A.J.P. had tested positive for THC and cocaine. A.J.P. admitted to using marijuana that turned out to be laced with cocaine. At the probation-violation hearing on December 19, A.J.P. admitted the violation. The district court ordered that A.J.P. be allowed to go only to his sober-living home, Frazier for treatment, and UPS for work. The district court also ordered an updated chemical-dependency evaluation and a complete medical evaluation.

A.J.P.'s third probation violation occurred in February 2024. On February 23, Frazier moved A.J.P. to a crisis center for mental-health stabilization. Later that day,

A.J.P.'s father checked him out of the crisis center and took him home. The next day, A.J.P.'s parents took him to Hennepin County Medical Center (HCMC) for a mental-health-crisis evaluation. A.J.P. was evaluated and discharged from HCMC, having not met the criteria for hospitalization. Frazier agreed to take A.J.P. back if he returned by February 27 at 4:30 p.m. A.J.P. did not return, and Frazier discharged A.J.P. without his having successfully completed the program.

On February 29, A.J.P.'s probation officer learned that A.J.P. was having some struggles at home. A.J.P. missed a mental-health appointment because he left home, and his father went out looking for him. Once A.J.P.'s parents found him, they brought him home and then called the police to assist after they saw A.J.P. consume unidentified pills. A.J.P. was taken to HCMC by ambulance. When A.J.P. returned home later that day, A.J.P.'s mother said he was "out of control." A.J.P.'s probation officer requested the assistance of law enforcement in transporting A.J.P. to the JSC. Upon arriving at the JSC, police found fentanyl in A.J.P.'s possession, and A.J.P. admitted to consuming fentanyl two hours earlier. A.J.P. was arrested and transported to the Dakota County jail on February 29.

A.J.P.'s hearing on this third probation violation took place on March 12, 2024. The state alleged violations for chemical use and failing to complete treatment. A.J.P. admitted the violation of failing to successfully complete treatment. The district court reinstated the same terms and conditions of probation, noting that "no use" of chemical substances would include no use of marijuana moving forward. A.J.P. had not posted bail in his adult possession case from February 29 and was still being held at the Dakota County jail at the

time of the hearing. The district court ordered that, if A.J.P. posted bail, he had to return to Frazier and be on GPS monitoring for 90 days.

A.J.P.'s final probation violation took place in March 2024. A.J.P. had been furloughed from the Dakota County jail and returned to Frazier. He was placed in a different sober-living home with GPS monitoring. On March 26, Frazier informed A.J.P.'s probation officer that A.J.P. had not been taking his prescribed medication and was exhibiting bizarre behaviors. Frazier intended to transfer A.J.P. to a crisis center to stabilize him. However, on March 27, a warrant was issued for A.J.P.'s arrest due to A.J.P. possessing drugs while he absconded from Frazier in February.[1] A.J.P. was arrested at Frazier and taken to jail. As a result, A.J.P. was unsuccessfully discharged from Frazier. In the discharge report, Frazier listed the reason for discharge as, "Client was taken into custody on a warrant."

The district court held a contested probation-violation and EJJ-revocation hearing on June 6, 2024. The state alleged that A.J.P. had violations for "failure to complete treatment as ordered" and "failure to take medications as prescribed." A.J.P. denied the probation violations. At the hearing, the state submitted 26 exhibits, and the district court received testimony from A.J.P. and his probation officer. The probation officer testified that A.J.P. "is a risk to public safety" and himself, given his repeated rejection of treatment and continued drug use. The probation officer's team unanimously agreed to recommend

[1] This was a separate criminal charge from the charge A.J.P. was arrested for on February 29, but both charges relate to conduct by A.J.P. while absconding from Frazier in February.

A.J.P.'s EJJ status be revoked due to A.J.P.'s inability to be "appropriately supervised under juvenile probation."

In an order dated June 28, 2024, the district court found that A.J.P. violated the conditions that he complete treatment and refrain from using or possessing alcohol and non-prescribed drugs, and that the violations were intentional and inexcusable. The district court further concluded that A.J.P.'s "need for confinement outweighs the policies favoring probation." The district court also found that A.J.P.'s mental-health issues did not "rise to the level of a mitigating factor." The district court revoked A.J.P.'s EJJ status and probation and executed the stayed prison sentence.

A.J.P. appeals.

DECISION

A.J.P. argues that the district court erred by revoking his EJJ status and probation and executing his stayed sentence.

"An EJJ prosecution is a blending of juvenile and adult criminal dispositions that extends jurisdiction over a young person to age twenty-one and permits the court to impose both a juvenile disposition and a criminal sentence." *In re Welfare of B.N.S.*, 647 N.W.2d 40, 42 (Minn. App. 2002); *see* Minn. Stat. § 260B.193, subd. 5(b) (2020).

In an EJJ proceeding, if the juvenile is found or pleads guilty, the district court "shall: (1) impose one or more juvenile dispositions under section 260B.198; and (2) impose an adult criminal sentence, the execution of which shall be stayed on the condition that the offender not violate the provisions of the disposition order and not commit a new offense." Minn. Stat. § 260B.130, subd. 4(a) (2020).

Before revoking EJJ probation and executing the stayed sentence, the district court must conduct the three-step *Austin* analysis. *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980) (identifying three factors that must be considered in probation-revocation proceedings); *State v. B.Y.*, 659 N.W.2d 763, 768-69 (Minn. 2003) (holding that *Austin* factors must be considered in EJJ probation-revocation proceedings). The *Austin* factors require that the district court (1) "designate the specific condition or conditions [of probation] 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." *Austin*, 295 N.W.2d at 250; *see also* Minn. R. Juv. Delinq. P. 19.11, subd. 3(C)(2) (requiring written findings on the three factors). The district court must base these findings on clear and convincing evidence. Minn. R. Juv. Delinq. P. 19.11, subd. 3(C)(1). If the district court has made these findings, it "shall order execution of the sentence unless the court makes written findings indicating the mitigating factors that justify continuing the stay." Minn. R. Juv. Delinq. P. 19.11, subd. 3(C)(3).

"The [district] court has broad discretion in determining if there is sufficient evidence to revoke probation," and appellate courts will reverse a revocation of EJJ status and probation only if there is a clear abuse of discretion. *Austin*, 295 N.W.2d at 249-50; *see B.Y.*, 659 N.W.2d at 768-69. "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). We review de novo whether the district court made the required findings on the *Austin* factors. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005). We will not reverse the district court's findings of fact unless they are

clearly erroneous. *In re Welfare of J.H.*, 844 N.W.2d 28, 34-35 (Minn. 2014). "A finding is clearly erroneous only if there is no reasonable evidence to support the finding or when an appellate court is left with the definite and firm conviction that a mistake occurred." *Id.* at 35 (quotation omitted).

A.J.P. advances two arguments why we should reverse the revocation of A.J.P.'s EJJ status and probation and the execution of his stayed sentence. The first argument is that the district court erred by finding that A.J.P. "intentionally and inexcusably" violated a condition of his probation. The second is that the "state did not prove with clear and convincing evidence that A.J.P.'s confinement in adult prison outweighed the policies favoring retention of his case in the juvenile court." We understand the first argument to be addressing the first and second *Austin* factors and the second argument to be addressing the third *Austin* factor.

I. The district court did not err by finding that A.J.P. inexcusably and intentionally violated a condition of his EJJ probation.

A.J.P. argues that the district court failed to make findings supported by clear and convincing evidence on the first two *Austin* factors.

A. First *Austin* Factor

The first *Austin* factor requires the district court to "designate the specific condition or conditions [of probation] that were violated." *Austin*, 295 N.W.2d at 250.

Here, the district court determined that A.J.P. violated the condition of probation that he complete treatment. The district court specifically found that A.J.P. "failed to complete treatment and was unsuccessfully discharged from the Frazier program on

March 27, 2024." This finding is supported by the discharge report from Frazier and the testimony of A.J.P.'s probation officer. A.J.P. was unsuccessfully discharged from Frazier on March 27, despite being required to complete the program. Neither party disputes that the unsuccessful discharge occurred. Therefore, the district court did not err by concluding that A.J.P. violated a condition of his probation under the first *Austin* factor.[2]

B. Second *Austin* Factor

The second *Austin* factor requires the district court to find that the violation was intentional or inexcusable. *Id.*

In a conclusion of law in its order, the district court stated, "[A.J.P.'s] violations are intentional and inexcusable." It went on to state that A.J.P. "chose to leave treatment at Frazier," was then "evaluated at HCMC and discharged," and "fail[ed] to return to Frazier."

A.J.P. argues that the district court erred by focusing on his February conduct, during which he absconded from Frazier, when the court was "supposed to be addressing violations that occurred after the March 12, 2024 hearing."[3] In A.J.P.'s view, the district

[2] Because only one violation is required under the first *Austin* factor, we decline to address A.J.P.'s argument that clear and convincing evidence does not support the district court's conclusion that A.J.P. also violated the condition of probation requiring "no use or possession of alcohol or non-prescribed drugs." *See id.* (requiring district court to designate violated "condition or conditions").

[3] The state argues that A.J.P. forfeited any argument regarding the district court's consideration of events outside the March 27 violation because A.J.P.'s counsel failed to object to the admission of that evidence at the revocation hearing. But A.J.P. is not objecting to the admissibility of that evidence and agrees that it is admissible as to the third *Austin* factor. Rather, A.J.P. argues that the district court erred in relying on this evidence in making findings in its order on the first and second *Austin* factors. A.J.P.'s argument here is not forfeited.

court should have focused only on A.J.P.'s arrest on March 27, when he was "forcefully taken from treatment."

The district court did connect its conclusion on the second *Austin* factor to A.J.P.'s February conduct, during which A.J.P. voluntarily left Frazier and did not return to Frazier after being discharged from HCMC. And the district court did address the February conduct at a probation-violation hearing on March 12, 2024, at which A.J.P. admitted the violation and the district court reinstated his probation. A.J.P. asserts that the district court therefore erred by relying on past conduct that was "previously admitted" and "already sanctioned" at the prior probation-violation hearing. We disagree that the district court's decision was erroneously based only on already sanctioned conduct.

In its order revoking EJJ probation, the district court found that A.J.P. failed to complete treatment and was unsuccessfully discharged from treatment on March 27, 2024. The March 27, 2024 discharge report from Frazier states that A.J.P. was discharged because A.J.P. "was taken into custody on a warrant." Thus, the basis for the district court's revocation of probation was the March 27 dismissal from Frazier and A.J.P.'s failure to complete treatment. The district court did not revoke A.J.P.'s EJJ probation based on the same violative conduct that was considered in the March 12 probation-revocation hearing.

A.J.P. argues that his unsuccessful discharge from treatment cannot be considered "intentional or inexcusable" because it was due to his arrest, rather than him leaving voluntarily or refusing to participate. This argument is unconvincing. The record provides support that the conduct underlying AJ.P.'s arrest was both intentional and inexcusable. A.J.P. allegedly possessed drugs while absconding from Frazier in February, which led to

his March 27 arrest and his subsequent unavailability for treatment. A.J.P. does not argue that he did not possess the drugs in February 2024. He simply argues that the second *Austin* factor cannot be based on conduct that predates the last probation-violation hearing. But a consequence of A.J.P.'s intentional conduct in February 2024 was that he was charged with a crime and arrested and, as a result, was discharged from treatment on March 27 and could not complete treatment. This failure to complete treatment was a new violation. On this record, the district court did not abuse its discretion by concluding that A.J.P.'s violation was intentional and inexcusable.[4]

---

[4] We make two points in response to the dissent. First, the dissent reasons that the district court's finding lacks evidentiary support because A.J.P. did not engage in "willful conduct" on March 27 and he was discharged from treatment "through no fault of his own." But, as we explain above, A.J.P. was discharged from treatment on March 27—violating the condition of probation that he successfully complete treatment—and the arrest that led to his discharge was based on his intentional conduct.

Second, the dissent asserts that A.J.P.'s due-process rights were violated because his conduct was already the subject of a probation-violation charge and hearing and therefore could not be considered again. As a preliminary matter, we note that A.J.P. did not make a due-process argument on appeal. The principle of party presentation counsels against deciding a case based on an issue that was not raised or briefed on appeal. *See Greenlaw v. United States*, 554 U.S. 237, 244 (2008). In any event, we do not agree that A.J.P.'s due-process rights were violated. The foreign decisions cited in the dissent are not persuasive on the question. Although the appellant in *Green v. Commonwealth* raised a due-process argument, the court did not "reach the merits of [the appellant's] assignment of error" because the appellant failed to provide a sufficient record to the court. 779 S.E.2d 207, 212 (Va. Ct. App. 2015). And, in *State v. Quarles*, the court held that due process did not bar a hearing on a probation-violation charge when the charge was previously brought and considered at a hearing but then withdrawn by the state before decision. 761 P.2d 317, 320 (Kan. Ct. App. 1988). That case simply did not address the factual situation that we have here. In addition, we disagree that A.J.P. was sanctioned twice for the same conduct. A.J.P.'s failure to complete treatment due to his March 27 discharge was a consequence of his conduct that did not materialize until that date, and he therefore was first held accountable for that consequence in the district court's order here.

II. The district court did not err by concluding that the need for confinement outweighed the policies favoring retention in the juvenile system.

A.J.P. argues that the district court failed to make findings supported by clear and convincing evidence on the third *Austin* factor.

The third *Austin* factor requires the district court to find that the "need for confinement outweighs the policies favoring probation." *Austin*, 295 N.W.2d at 250. When analyzing the third *Austin* factor, the district court must consider the *Modtland* subfactors. *Modtland*, 695 N.W.2d at 606-07. The *Modtland* subfactors are as follows: (1) "confinement is necessary to protect the public from further criminal activity by the offender," (2) "the [juvenile] offender is in need of correctional treatment which can most effectively be provided if he is confined," and (3) "it would unduly depreciate the seriousness of the violation" if the district court did not revoke probation. *Id.* at 607. "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).

In making these findings, the district court should not merely recite the *Austin* factors and "offer[] general, non-specific reasons for revocation." *Modtland*, 695 N.W.2d at 608. Rather, the district court must make "thorough, fact-specific records" and provide "substantive reasons for revocation and the evidence relied upon." *Id.* Importantly, "[t]he 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).

The district court made findings on all three *Modtland* subfactors, even though only one is needed to satisfy the third *Austin* factor. *See Smith*, 994 N.W.2d at 320. For the second *Modtland* subfactor, the district court concluded that A.J.P. "is in need of correctional treatment which can be most effectively provided if he is confined." The district court explained that A.J.P. "will not successfully complete an outpatient treatment program." This conclusion is supported by the district court's many findings that A.J.P. was unsuccessfully discharged from outpatient treatment and the probation report detailing A.J.P.'s many unsuccessful outpatient attempts. Though A.J.P. notes his success in inpatient treatment, the district court properly concluded that this success was not translating to outpatient programs. While we acknowledge A.J.P.'s argument that he did not feel that any of the treatment programs "adequately addressed [his] mental health needs," the record provides evidence that Frazier was trying to work with A.J.P. to address his mental-health issues.[5]

For the third *Modtland* subfactor, the district court concluded that "it will unduly depreciate the seriousness of the violation if the EJJ probation is not revoked." The district

[5] A.J.P. cites several nonprecedential cases in support of his argument, but they do not alter our analysis. This case is distinguishable from the cases that A.J.P. relies on: *State v. N.R.S.*, No. A11-0523, 2011 WL 6351868, at *3-4 (Minn. App. Dec. 20, 2011) (reversing EJJ-probation revocation because N.R.S. was having success in treatment leading up to revocation), and *State v. G.D.T.*, No. A13-1515, 2014 WL 1272383, at *2-3 (Minn. App. Mar. 31, 2014) (reversing EJJ-probation revocation where probation officer opposed revocation and offered another viable option), *rev. denied* (Minn. June 17, 2014). A.J.P.'s case is more analogous to the case cited by the state: *State v. M.N.M.*, No. A21-0291, 2021 WL 5441819, at *4-5 (Minn. App. Nov. 22, 2021) (affirming EJJ-probation revocation where record showed M.N.M.'s continued unsuccessful attempts at treatment and new offenses in the community), *rev. denied* (Minn. Jan. 26, 2022).

court explained that A.J.P. was "given multiple chances" and was told by the court "many times that if he did not follow the directives of probation, his probation would be revoked, and he would face an 86-month prison sentence." The district court's findings outline the many times A.J.P. was warned of the consequences of continuing to violate his probation. For example, on August 18, 2023, the district court told A.J.P. that "he must complete [the] treatment program." On November 7, 2023, the district court warned A.J.P. to "follow the terms of his medical marijuana prescription." On March 12, 2024, the district court ordered A.J.P. to go back and complete treatment at Frazier and have no overnight visits. The district court's multiple warnings and chances for A.J.P. to complete treatment did not prevent A.J.P. from continuing to violate his probation. The district court's findings on the third *Modtland* subfactor are supported by clear and convincing evidence.

The district court also briefly addressed the first *Modtland* subfactor by concluding that "[t]here are no other suitable options in the juvenile justice system to provide treatment and accountability to [A.J.P.] that will serve to reduce his risk to public safety before he turns 21 on June 30, 2025." The district court determined that there was not enough time to complete treatment through the available options before A.J.P. would turn 21. Although A.J.P. disagrees with this conclusion, it is supported by the testimony of A.J.P.'s probation officer. The probation officer testified that two of the options for treatment were not suitable because they were not secure enough. The probation officer also testified that Red Wing Correctional Facility was not suitable because, though A.J.P. may have finished treatment in a year, there would not be enough time to supervise him in the community

after completion. The district court's conclusion on the first *Modtland* subfactor is thus supported by clear and convincing evidence.[6]

Because the district court made findings on all three *Modtland* subfactors that are supported by clear and convincing evidence, the district court did not abuse its discretion by concluding that A.J.P.'s "need for confinement outweighed the policies favoring retention in the juvenile system."

Affirmed.

[6] A.J.P. also argues that two findings of the district court are clearly erroneous: (1) the district court's finding that A.J.P. "has not been able to complete an inpatient program" and (2) the district court's finding that A.J.P. "never followed the [marijuana] dosage prescribed . . . as shown by his U/A test results indicating increasing levels of THC." Because the other findings of the district court are sufficient to support its conclusion on the third *Austin* factor, we do not reach this argument.

JOHNSON, Judge (dissenting)

The district court twice found that A.J.P. committed the same intentional violation of a condition of his probation: leaving the Frazier facility and not completing treatment on February 23, 2024. After first making that finding at the March 12, 2024 hearing, the district court reinstated A.J.P. on probation. After making that finding a second time at the June 6, 2024 hearing, the district court revoked A.J.P.'s probation and executed his sentence. A.J.P. did not engage in any willful violative conduct between the March 12, 2024 hearing and the June 6, 2024 hearing. Accordingly, I respectfully dissent from the opinion of the court.

A.

Because a probationer may suffer a loss of liberty in a probation-revocation proceeding, the Due Process Clause applies. *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *State v. Cottew*, 746 N.W.2d 632, 636 (Minn. 2008). "[F]undamental fairness" is "the touchstone of due process." *Gagnon*, 411 U.S. at 790. In a probation-revocation proceeding, due process requires a court to ask "whether and when it is fundamentally unfair or arbitrary for the State to revoke probation." *Bearden v. Georgia*, 461 U.S. 660, 666 (1983).

B.

The procedural history relevant to this appeal is somewhat complicated but is essential to resolving A.J.P.'s argument.

On March 1, 2024, A.J.P.'s probation officer filed a third probation-violation report alleging that, between February 23, 2024, and February 29, 2024, A.J.P. violated three

conditions of his probation. At a March 12, 2024 hearing, the state withdrew one allegation, a "remain-law-abiding violation," which was based on the fact that A.J.P. had been charged with a crime for possessing fentanyl on February 29, 2024. A.J.P. admitted that he committed a violation by leaving Frazier and not successfully completing treatment on February 23, 2024. The district court accepted A.J.P.'s admission, found that his violation was intentional and inexcusable, and reinstated him on probation. The district court imposed an additional condition that, if A.J.P. were released from the Dakota County jail, he would be required to return to Frazier. A.J.P. was furloughed from jail on March 18, 2024, and returned to Frazier.

On March 27, 2024, A.J.P.'s probation officer filed a fourth probation-violation report. On June 3, 2024, three days before the fourth violation hearing, the probation officer filed an amended fourth violation report, which alleged a single violation: that A.J.P. "violated the terms and conditions of his EJJ probation by not attending and completing Frazier Wellness outpatient chemical health treatment."

In its June 28, 2024 order, the district court made the first finding required by *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980), and *State v. Modtland*, 695 N.W.2d 602, 606-07 (Minn. 2005):

> The State has proven by clear and convincing evidence that [A.J.P.] violated the conditions ordered on January 6, 2022, as follows: (a) Failed to enter and complete chemical dependency evaluation and follow recommendations for treatment; (b) No use or possession of alcohol or non-prescribed drugs.

In the next paragraph, the district court made the second finding required by *Austin* and *Modtland*:

> [A.J.P.]'s violations are intentional and inexcusable. [A.J.P.] chose to leave treatment at Frazier. His self-diagnosed mental health crisis is not a mitigating excuse. He was evaluated at HCMC and discharged and he chose not to return to treatment. It was made clear to [A.J.P.] that failure to return to Frazier was a violation of the express directive of probation, and would result in his discharge from treatment.

The district court's second *Austin-Modtland* finding refers only to the violation described in subparagraph (a) of the previous paragraph (but not to the violation described in subparagraph (b)). Thus, the only violation for which both the first and second *Austin-Modtland* findings were made—and, thus, the only violation that might justify revocation—is the violation described in subparagraph (a): failure to enter and complete chemical-dependency evaluation and follow recommendations for treatment.

The district court's second *Austin-Modtland* finding makes clear that the conduct on which the district court relied in revoking A.J.P.'s probation is A.J.P.'s leaving Frazier without successfully completing treatment on February 23, 2024—the same conduct he admitted at the March 12, 2024 hearing.

C.

The opinion of the court reasons that the district court's first *Austin-Modtland* finding is supported by a finding that A.J.P. was discharged from Frazier on March 27, 2024. *See supra* at 8-9. In the finding concerning A.J.P.'s March 27, 2024 discharge, the district court cited an exhibit consisting of the Frazier discharge summary, which states:

"Reasons for and circumstances of service termination: Client was taken into custody on a warrant." There are two interrelated problems with the court's reasoning.

1.

First, the court's interpretation of the district court's first *Austin-Modtland* finding (that it is based on the involuntary March 27, 2024 discharge) does not align with the district court's second *Austin-Modtland* finding, which refers to A.J.P.'s voluntary self-discharge on February 23, 2024. The district court's statements that A.J.P. "chose to leave treatment at Frazier," that he did so because of a "self-diagnosed mental health crisis," that he was evaluated at HCMC, and that he "chose not to return to treatment" refer to A.J.P.'s conduct in late February 2024. The court affirms the district court for reasons not stated by the district court.

A.J.P.'s argument for reversal is based on the implied premise that evidence of a probationer's conduct previously used to prove a probation violation may not be used again in a subsequent violation proceeding to prove another probation violation. I agree with that premise. To be sure, the Double Jeopardy Clause of the Fifth Amendment does not apply in probation-revocation proceedings. *See, e.g.*, *State v. Vaden*, 526 P.3d 620, 627 n.12 (Haw. 2023); *State v. Quarles*, 761 P.2d 317, 319-20 (Kan. Ct. App. 1988); *State v. Maynard*, 233 P.3d 331, 341 (Mont. 2010); *Green v. Commonwealth*, 779 S.E.2d 207, 211-12 (Va. Ct. App. 2015); *Peterson v. State*, 558 P.3d 210, 211-13 (Wyo. 2024). But analogous principles are part of the due-process protections that apply to probation-revocation proceedings.

For example, in *Green*, a probationer argued that his due-process rights were violated because his probation was revoked based on conduct that was alleged in a prior violation proceeding, which resulted in the re-suspension of his prison sentence. 779 S.E.2d at 209-13. The court engaged the argument, without questioning its viability, but denied relief because the probationer did not provide a record of the first violation proceeding that would allow the appellate court to determine whether the conduct at issue in the second proceeding was the sole factual basis of the violation that was found in the first proceeding. *Id.* at 212-13. In this case, in contrast, A.J.P. has presented this court with the full district court record, and it is clear that the violation found by the district court at the third violation hearing on March 12, 2024, is based on the same conduct on which the district court relied in finding a violation and revoking probation at the fourth violation hearing on June 6, 2024.

As another example, in *Quarles*, the state alleged that a probationer violated a probation condition by using cocaine, but the state "encountered difficulties" in presenting its evidence at the hearing and withdrew the allegation. 761 P.2d at 318. One month later, the state again alleged the same violation, which it later proved at a hearing, resulting in revocation. *Id.* at 318-19. On appeal, the probationer argued that his due-process rights required application of the *res judicata* doctrine. *Id.* at 320. The court applied the requirements of *res judicata* but concluded that the second allegation was not precluded by the first because there was no final judgment on the merits in the first proceeding due to the state's withdrawal of the alleged violation. *Id.* In this case, in contrast, the state obtained a determination on the merits of its third alleged violation when A.J.P. admitted

that he left Frazier on February 23, 2024, without successfully completing treatment and the district court found an intentional violation but reinstated A.J.P.'s probation.

2.

Second, if the district court's first *Austin-Modtland* finding is understood to refer to A.J.P.'s discharge from Frazier on March 27, 2024, as the opinion of the court reasons, the finding is without proper evidentiary support because A.J.P. did not engage in any willful conduct that violated his probation conditions on March 27, 2024, or during the period between the third hearing on March 12, 2024, and March 27, 2024. A.J.P. was discharged from Frazier on March 27, 2024, because police officers executed an arrest warrant at Frazier and removed A.J.P. to the Dakota County jail. The arrest warrant was issued because the county attorney's office filed a second set of criminal charges against A.J.P. in a new criminal case alleging that he possessed fentanyl on February 28, 2024, two weeks before the March 12, 2024 hearing.

In *Bearden*, the Supreme Court considered "whether a sentencing court can revoke a defendant's probation . . . absent evidence and findings that the defendant was somehow responsible for" a violation of a condition of probation. 461 U.S. at 665. The Court stated that "the State is perfectly justified in using imprisonment as a sanction" if a probationer "willfully" violates or "fail[s] to make sufficient bona fide efforts" to comply with a condition of probation. *Id.* at 668. But if a probationer "has made all reasonable efforts" to comply with a condition of probation "yet cannot do so through no fault of his own, it is fundamentally unfair to revoke probation automatically without considering whether adequate alternative methods of punishing the defendant are available." *Id.* at 668-69.

As a matter of due process, A.J.P. cannot be held "responsible for" his discharge from Frazier on March 27, 2024, because, between March 12, 2024, and March 27, 2024, he did not "willfully" violate or "fail[] to make sufficient bona fide efforts" to comply with a condition of probation. *See id.* at 665, 668. Because A.J.P.'s discharge from Frazier occurred "through no fault of his own" during the relevant time period, "it is fundamentally unfair" to revoke his probation without any evidence of willful conduct during the relevant period. *See id.* at 668-69.

To be clear, a probationer may be held accountable for willful conduct that results in a discharge from a treatment facility if a condition of probation requires the probationer to remain in or complete treatment. But a probationer should be held accountable for such conduct *only once*. In this case, A.J.P. was held accountable for his conduct occurring in late February 2024 at both the March 12, 2024 hearing and the June 6, 2024 hearing. It is fundamentally unfair for A.J.P. to twice be subjected to the risk of revocation of his probation based on the same underlying conduct. The district court did not merely consider A.J.P.'s prior violation when analyzing the third *Austin-Modtland* factor; the district court relied on the same conduct on two successive occasions when analyzing the first *Austin-Modtland* factor.

In sum, I would consider the state's evidence of a fourth probation violation only to the extent allowed by constitutional due-process principles. In my view, due-process principles forbid the state from proving a violation with the same evidence that was used to prove a prior violation and from proving a violation without evidence that a probationer engaged in willful violative conduct since the prior violation. Thus, I would conclude that

the district court clearly erred by finding that A.J.P. committed a fourth violation of a condition of his probation and by revoking his probation.