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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1130**

Chad Jason Emanuelson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent

**Filed March 24, 2014
Affirmed
Worke, Judge**

Dakota County District Court
File No. 19-KX-07-000141

Cathryn Middlebrook, Chief Appellate Public Defender, Stephanie A. Karri, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Heather D. Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges the revocation of his probation based on admitted violations including disorderly conduct and furnishing alcohol to a minor. We affirm.

FACTS

In January 2007, appellant Chad Emanuelson was convicted of possession of a firearm by an ineligible person in violation of Minn. Stat. § 624.713 (2006) and sentenced to 60 months in prison. The district court stayed execution of the sentence and placed Emanuelson on probation for seven years. In separate incidents in 2008, Emanuelson was cited for driving with a suspended driver's license and disorderly conduct stemming from alleged domestic abuse. The state sought revocation of Emanuelson's probation and imposition of the 60-month sentence after these violations, but the court continued his probation and sentenced him to 25 days in jail.

In March 2011, Emanuelson was convicted of the gross misdemeanor of providing alcohol to a minor. Emanuelson informed his probation officer of the conviction, and admitted to the district court that he was in violation of his probation at the subsequent contested probation-violation hearing. Emanuelson blamed the violation on alcohol dependency that had since been treated. Emanuelson's probation officer recommended executing the sentence. The state, which noted that Emanuelson's original stay of execution was generous in light of his presumptive commit to prison, also asked the district court to execute the sentence.

The district court recited the required factors established in *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980) and executed Emanuelson's 60-month sentence. In February 2012, Emanuelson petitioned for postconviction relief, arguing that the district court erred when it found that the need to confine him outweighed the policies favoring

his continued probation. The district court found that all of the *Austin* factors had been met and denied Emanuelson's motion to vacate his revocation. This appeal followed.

D E C I S I O N

This court “review[s] a postconviction court’s findings to determine whether there is sufficient evidentiary support in the record.” *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001) (citation omitted). We “afford great deference to a district court’s findings of fact and will not reverse [them] unless they are clearly erroneous.” *Id.* “The decisions of a postconviction court will not be disturbed unless the court abused its discretion.” *Id.*

To revoke probation, a district court must identify the specific conditions of probation that were violated, find that those violations were “intentional or inexcusable,” and “find that the need for confinement outweighs the policies favoring probation.” *Austin*, 295 N.W.2d at 250. “[I]n making the three *Austin* findings, . . . [district] courts must seek to convey their substantive reasons for revocation and the evidence relied upon.” *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005). Because revocation of probation is within the broad discretion of the district court, we will not reverse absent a clear abuse of that discretion. *Austin*, 295 N.W.2d at 249-50.

Emanuelson does not contest that the first two *Austin* factors are satisfied. His sole contention is that the postconviction court abused its discretion by upholding the district court’s finding that the need for confinement outweighed policies favoring probation.

The district court found “that the need for incarceration really does outweigh . . . the need for rehabilitative services.” The district court rested its reasoning on two

findings. First, it found that Emanuelson was “given a gift that few people that walk through this courtroom get” on his ineligible possession charge because “[m]ost people just go to prison for 60 months.” Second, the district court found that Emanuelson “failed to remain law abiding a few times” when he was cited for driving with a suspended license and for disorderly conduct. The district court summed up its reasoning by telling Emanuelson that “[w]hen you have 60 months hanging over your head on a case where most members of the population would have gone to prison off the bat, you cannot afford to continue to have violations.” The postconviction court did not address the substance of the district court’s *Austin* findings, but denied Emanuelson’s petition because “[t]he [district] court record from the probation violation [hearing] addressed all of the *Austin* factors.”

In *Austin*, the supreme court held that a district court weighing the need for confinement is governed by the American Bar Association’s Standards for Criminal Justice. These standards state that “[r]evocation followed by imprisonment should not be the disposition” unless the district court finds that (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 251.

The record supports the district court’s finding that the need for incarceration outweighed the policies favoring probation. The district court noted that it would endanger the public to continue Emanuelson on probation when he had provided alcohol

to a minor and was cited for disorderly conduct in a domestic incident. Furthermore, the district court recognized that Emanuelson's repeated violations demonstrated that probation was not providing the correctional treatment that he required. And in light of Emanuelson's repeated and serious violations despite the generosity of his probation in the first place, the district court concluded that allowing him to continue on probation would diminish the seriousness of his offenses. Consequently, the district court properly revoked Emanuelson's probation, and the postconviction court did not abuse its discretion by denying Emanuelson's motion to vacate.

Affirmed.