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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1789**

State of Minnesota,
Respondent,

vs.

Rip Wayne Rust,
Appellant.

**Filed May 12, 2014
Affirmed
Kirk, Judge**

Hennepin County District Court
File No. 27-CR-09-6681

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

Michael O. Freeman, Hennepin County Attorney, Elizabeth R. Johnston, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, F. Richard Gallo, Jr., Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

KIRK, Judge

Appellant Rip Wayne Rust challenges the district court's revocation of his probation, arguing that it abused its discretion by failing to make required findings under

the second and third factors in *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). We affirm.

DECISION

“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.” *Austin*, 295 N.W.2d at 249-50. Whether a lower court has made the required *Austin* findings is a question of law, which this court reviews de novo. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005). Before revoking a defendant’s probation, the district court must make specific findings on all three *Austin* factors. *State v. Cottew*, 746 N.W.2d 632, 636-37 (Minn. 2008). Under *Austin*, the 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.” 295 N.W.2d at 250. The Minnesota Supreme Court in *Modtland* reaffirmed *Austin*’s core holding that district courts are required to make thorough, fact-specific findings on the record before revoking probation. 695 N.W.2d at 606, 608.

In March 2009, appellant pleaded guilty to first-degree refusal to submit to a chemical test, in violation of Minn. Stat. § 169A.20, subd. 2 (2008). The district court stayed the execution of appellant’s 48-month sentence for five years and placed appellant on supervised probation subject to a number of conditions, including following all instructions of probation and remaining law abiding.

Between 2010 and 2013, appellant repeatedly violated the conditions of his probation and was sentenced to several periods of incarceration in the Hennepin County

workhouse. On June 10, 2013, the district court granted appellant a work furlough from the workhouse. When appellant did not report back on June 11, the district court issued an arrest warrant alleging that he violated the terms of his probation by failing to return to the workhouse as ordered on June 11 and not showing up for work on June 10 and 11. On June 24, the district court held a probation violation hearing. Appellant admitted that he did not return to the workhouse on June 10, but insisted that he acted under the belief that he had been indefinitely furloughed. On cross-examination, the state presented evidence that on June 10 appellant spoke with a probation officer at the workhouse and lied that he had been released on his own recognizance. The state also presented evidence that appellant had admitted in another hearing that the district court, his attorney, and the prosecutor told him that he must return to the workhouse on June 10 to ensure that all of his paperwork was processed before being furloughed.

The district court found that appellant had violated the terms and conditions of his probation, executed his stayed sentence, and committed him to the custody of the commissioner of corrections for 48 months.

Appellant argues that the district court did not properly consider the second *Austin* factor because it made no determination that he intentionally violated the court's order to report to the workhouse. To satisfy the second *Austin* factor, the district court is required to make a finding that appellant either intentionally *or* inexcusably violated his probation. 295 N.W.2d at 250. Here, the district court stated on the record that appellant's failure to return to the workhouse after the district court ordered him to do so was inexcusable.

The district court satisfied the second *Austin* factor when it rejected appellant's version of events and made an explicit finding that appellant's actions on June 10 were inexcusable.

Appellant next argues that the district court failed to make required findings on the third *Austin* factor. The third *Austin* factor requires the district court to "balance the probationer's interest in freedom and the state's interest in insuring his rehabilitation and the public safety, and base their decisions on sound judgment and not just their will." *Modtland*, 695 N.W.2d at 606-07 (quotations omitted). A district court may find the third *Austin* factor satisfied if any one of the following three sub-factors are present: if confinement is necessary to protect the public from further criminal activity by the offender; the offender is in need of correctional treatment which can be most effectively provided by confinement; or it would unduly depreciate the seriousness of the violation if probation was not revoked. 295 N.W.2d at 251.

The record supports the district court's finding that the need for appellant's confinement outweighed the policies favoring probation. The district court commented that it had weighed the possibility of putting appellant in the workhouse or on work release again, but found this alternative was not appropriate because he had repeatedly violated work-release rules. The district court's finding reaffirms that appellant was in need of correctional treatment that is most effectively provided by confinement. The district court also found that not revoking appellant's probation would unduly depreciate the seriousness of the violation. The district court reasoned that appellant's extended custody in the workhouse had not transformed his attitude about the seriousness of his repeated probation violations or the need to comply with the court's orders.

We conclude that the district court's findings on the third *Austin* factor are more than adequate. The district court did not abuse its discretion in revoking appellant's probation.

Affirmed.