

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-0547**

State of Minnesota,  
Respondent,

vs.

Jorge Rosas,  
Appellant.

**Filed March 4, 2008  
Reversed and remanded  
Peterson, Judge**

Hennepin County District Court  
File No. 04081689

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Michael O. Freeman, Hennepin County Attorney, Donna J. Wolfson, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

John M. Stuart, State Public Defender, Sharon E. Jacks, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Peterson, Judge; and Wright, Judge.



## **UNPUBLISHED OPINION**

**PETERSON**, Judge

This appeal is from an order that executed appellant's 48-month sentence for second-degree controlled-substance crime after appellant failed to appear to begin a jail term imposed as a condition of a three-year stay of execution of the 48-month sentence. Because the district court did not make the findings that are required before probation may be revoked, we reverse and remand.

### **FACTS**

Appellant Jorge Rosas was charged with one count each of second-degree controlled-substance crime in violation of Minn. Stat. § 152.022, subds. 2(1), 3(a) (2004) (possession of six or more grams of methamphetamine), and obstructing legal process in violation of Minn. Stat. § 609.50, subds. 1(2), 2(3) (2004). The presumptive sentence for the controlled-substance offense was an executed term of 48 months in prison. Appellant pleaded guilty in exchange for a stayed term of 48 months in prison. As a condition of the stay, appellant was required to serve one year in the workhouse.

Sentencing was scheduled for September 19, 2005, but was continued until September 22, 2005, at appellant's request. On September 22, the district court sentenced appellant to 48 months in prison and stayed execution of the sentence for three years on the condition that appellant serve 365 days in the workhouse. Because appellant had his child with him when he appeared for sentencing on September 22, the district court, over the state's objection, allowed appellant to turn himself in the next day to begin serving his workhouse time.



Appellant did not return to court until December 8, 2006. At that time, the state asked that appellant's 48-month sentence be executed. To explain his absence, appellant stated, "It's just that my father died." The district court responded that it did not believe that appellant's father died between appellant's appearance for sentencing on September 22, 2005, and the time when appellant was to turn himself in on September 23, 2005. Following some discussion about plea negotiations, defense counsel stated, "[M]y client is not willing to accept any negotiations with the State. He is going to proceed with the terms and the conditions that the Court is going to sentence here to today that is 48 months commitment and he will be appealing."

The district court executed appellant's sentence without making any findings other than that it did not believe appellant's claim that his father died on September 22 or 23, 2005. This appeal followed.

## **DECISION**

Generally, the district court has broad discretion when determining whether probation has been violated and will not be reversed absent an abuse of discretion. *State v. Ornelas*, 675 N.W.2d 74, 79 (Minn. 2004). The district court's findings of fact are accorded great weight and should not be overturned unless clearly erroneous. Minn. R. Civ. P. 52.01. But whether the district court made the findings necessary to revoke probation is a question of law, which this court reviews de novo. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

Before revoking probation, the district court must (1) designate the specific probation condition or conditions violated; (2) find that the violation was intentional or



inexcusable; and (3) find that the need for confinement outweighs the policies favoring probation. *Id.* at 606 (citing *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980)). The third factor is satisfied if “(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.” *Austin*, 295 N.W.2d at 251.

“The ‘written findings’ requirement is satisfied by the district court stating its findings and reasons on the record which, when reduced to a transcript, is sufficient to permit review.” *Modtland*, 695 N.W.2d at 608 n.4 (citing *Pearson v. State*, 308 Minn. 287, 292, 241 N.W.2d 490, 493 (1976)). Before *Modtland*, this court interpreted *Austin* to permit a “sufficient-evidence exception” to the requirement that the district court make findings on the required factors. *See, e.g., State v. Theel*, 532 N.W.2d 265, 267 (Minn. App. 1995), *reviewed denied* (Minn. July 20, 1995); *see also Austin*, 295 N.W.2d at 250 (affirming probation revocation despite district court’s failure to make a finding regarding the condition of probation violated). But *Modtland* abrogated the sufficient-evidence exception and now requires the district court to make specific findings on the *Austin* factors to assure the creation of a “thorough, fact-specific” record setting forth the substantive reasons for revoking probation. 695 N.W.2d at 608. Under *Modtland*, district courts “should not assume they have satisfied *Austin* by reciting the three factors and offering general, non-specific reasons for revocation, as it is not the role of the



appellate courts to scour the record to determine if sufficient evidence exists to support the district court's revocation.” *Id.*

Appellant argues that the district court abused its discretion because it did not make the required findings before revoking his probation. The state agrees that the district court failed to make the findings that are required under *Modtlan* before probation may be revoked and concedes that the case must be remanded to the district court.

Appellant argues that a remand for findings is not necessary because the evidence in the record does not support revocation. Based on his claim that his father died, appellant contends that the evidence is insufficient to show that his violation was intentional or inexcusable. But the district court did not believe appellant’s claim that his father died, and this court defers to the district court’s credibility determinations. Minn. R. Civ. P. 52.01. Furthermore, the record demonstrates that appellant did not return to court until almost 15 months after he was required to return. Consequently, even if appellant’s father died after appellant was sentenced, given the length of appellant’s delay in returning, the evidence could support a finding that appellant’s failure to return was intentional or inexcusable.

Appellant also argues that the record does not show that the need to confine him outweighed any benefits of keeping him on probation. Appellant contends that (1) because there is no evidence that he committed new offenses or used drugs during the time that he failed to return to court, there is no basis for concluding that he poses a public danger; and (2) imposing a jail sentence would have ensured that the seriousness



of his failure to return was not depreciated by placing him on probation again. But appellant's argument is based on his own assessment of the seriousness of his failure to return. Because the district court made no findings regarding the seriousness of appellant's failure to return, we do not know whether it would agree with appellant's assessment. But we cannot say as a matter of law that the failure to return is not sufficiently serious to support revoking appellant's probation. Therefore, we reverse the order executing appellant's sentence and remand to the district court to permit it to consider the factors that must be considered before revoking probation, to make findings on the required factors, and to determine whether appellant's probation should be revoked.

**Reversed and remanded.**