

*This opinion will be unpublished and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
A07-1742**

State of Minnesota,
Respondent,

vs.

Alberto Lopez Ramirez,
Appellant.

**Filed August 26, 2008
Affirmed
Johnson, Judge**

Dakota County District Court
File No. K0-05-368

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

James Backstrom, Dakota County Attorney, Judicial Center, 1560 Highway 55, Hastings, MN 55033 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Lydia Villalva Lijó, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Willis, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

In 2005, Alberto Lopez Ramirez pleaded guilty to aiding the sale of methamphetamine. The district court imposed an 86-month prison sentence but stayed execution of the sentence and placed Ramirez on probation for a period not to exceed 10 years. In 2007, the district court revoked Ramirez's probation and executed the sentence because Ramirez failed to stay in contact with his probation officer and re-entered the United States illegally after visiting family members in Mexico. We conclude that the district court did not abuse its discretion in revoking probation and executing the sentence and, therefore, affirm.

FACTS

On February 4, 2005, law-enforcement officers, using information obtained in an arrest of another individual, initiated a traffic stop of a pickup truck in which Ramirez was a passenger. The officers determined that Ramirez was in possession of crystal methamphetamine. Ramirez was charged with two counts of a first-degree controlled-substance crime. Ramirez pleaded guilty to the first count, aiding the sale of 10 grams or more of methamphetamine at least once during a 90-day period. *See* Minn. Stat. § 152.021, subd. 1(1) (2004). The state dismissed the second count.

At Ramirez's July 2005 sentencing, the district court imposed an 86-month sentence but stayed execution of the sentence. The transcript reveals that the district court believed that Ramirez would be subject to an immigration hold and deportation. The district court placed Ramirez on probation "for as long as [he was] in the United

States of America for a period not to exceed ten years.” Ramirez also was ordered to serve 365 days in the Dakota County Jail, with credit for time served. The district court instructed Ramirez that he was prohibited from using alcohol or illegal drugs, required to submit to random chemical and substance testing, and required to “follow the rules and regulations of probation [and] in all respects remain law abiding.” The district court also informed Ramirez that he ultimately would be released “to the INS hold for deportation upon their contacting you.” Because Ramirez does not speak English, an interpreter was provided to him at the sentencing hearing.

In July 2005, while Ramirez was in the county jail, the probation department sent him a letter, written in English, that informed him that he must contact Stacy Hughes, his probation officer, immediately upon his release from jail. Ramirez completed his jail term and was released on October 5, 2005. Within two weeks of his release, the state moved to revoke probation on the ground that Ramirez had failed to maintain contact with his probation officer. By that time, Ramirez had gone to Mexico to visit his family. On April 20, 2007, he re-entered the United States illegally and was apprehended at the border.

At a contested revocation hearing in June 2007, Hughes testified about the July 2005 letter and stated that Ramirez had not contacted her following his release from jail. Ramirez admitted in his testimony that he never contacted probation between the time that he left jail and when he was apprehended at the border, and he further testified that he knew he was breaking the law when he re-entered the United States. At the

conclusion of the hearing, the district court revoked Ramirez's probation and executed the 86-month prison sentence. Ramirez appeals.

DECISION

"The trial 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." *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980) (citations omitted). The supreme court has established a three-step analysis that must be completed by a district court before revoking probation. *Id.* at 250; *State v. Modtland*, 695 N.W.2d 602, 606 (Minn. 2005). The district court must: "(1) designate the specific condition of probation that has been 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. Whether the district court made the findings necessary to revoke probation is a question of law, which this court reviews de novo. *Modtland*, 695 N.W.2d at 605. The findings must be made in writing, but this requirement is satisfied by the district court stating its findings on the record. *Id.* at 608 n.4 (citing *Pearson v. State*, 308 Minn. 287, 292, 241 N.W.2d 490, 493 (1976)).

A. First *Austin* Factor

The district court found that Ramirez violated two conditions of probation, first, that he failed to maintain contact with his probation officer and, second, that he failed to remain law-abiding. Ramirez does not argue that the district court erred in finding that he violated these conditions of probation.

B. Second *Austin* Factor

Ramirez argues that the district court erred by finding that he intentionally and inexcusably violated the terms and conditions of his probation by failing to contact his probation officer and by re-entering the United States illegally.

With respect to his failure to contact his probation officer, Ramirez contends that it was not intentional or inexcusable because he speaks only Spanish and never received any information in Spanish from Hughes or probation personnel. The district court expressed some concern about the extent to which the probation department provided assistance to Ramirez in light of the fact that he does not speak English. But the district court found that a certified language assistant had translated the court proceedings for Ramirez, including the terms and conditions of his probation. The district court further found that Ramirez “clearly knew from the date of sentencing that he had some obligation to contact his probation officer and never did.” The district court told him at sentencing that he must “follow the rules and regulations of probation.” When the district court asked if he had any questions, Ramirez replied, “no.” Although the July 1, 2005, letter was in English, the district court stated that Ramirez could have sought language assistance in contacting the probation department but “made a conscious decision not to do it.” Ramirez claimed at his revocation hearing that his lawyers never explained to him the meaning of probation, but he previously had stated at his plea hearing that he was satisfied that his attorney had advised him fully and that if he were placed on probation, he would follow the terms of probation. We must presume that the

interpreter accurately interpreted the court proceedings for Ramirez. *See State v. Montalvo*, 324 N.W.2d 650, 652 (Minn. 1982).

With respect to his illegal re-entry into the United States, Ramirez argues that he was not advised by the district court at sentencing that re-entry into the United States would constitute a failure to remain law-abiding. The district court found that the state proved “beyond all doubt” that Ramirez intentionally chose not to remain law-abiding because Ramirez admitted on the witness stand that he knew that it was illegal for him to re-enter the United States. The record supports this finding because it reflects that, at sentencing, the district court informed Ramirez that he must, among other things, “follow the rules and regulations of probation [and] in all respects remain law abiding.” The district court was not obligated to give Ramirez examples of illegal conduct; even if specific conduct is not mentioned as being prohibited, it nonetheless may be an intentional and inexcusable violation. *See, e.g., State v. Spanyol*, 358 N.W.2d 125, 126-27 (Minn. App. 1984) (finding that probationer’s theft of goods violated terms of probation, which required her to obey “all state and federal laws and local ordinances”), *review denied* (Minn. Feb. 27, 1985).

Thus, the district court did not abuse its discretion in finding that Ramirez intentionally and inexcusably violated the terms and conditions of his probation.

C. Third *Austin* Factor

Ramirez argues that the district court abused its discretion in finding that the need for confinement outweighs the policies favoring probation. According to the supreme court, “There must be a balancing of the probationer’s interest in freedom and the state’s

interest in insuring his rehabilitation and the public safety.” *Austin*, 295 N.W.2d at 250. 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.”” *Id.* at 251 (quoting A.B.A. Standards for Criminal Justice, Probation § 5.1(a) (Approved Draft 1970)). Thus, imprisonment may be justified if only one of these factors is met. *Id.*

The district court stated that it was “unable to make any finding of any other sanction short of commit to prison that would adequately address the public safety needs and the deterrence[] that the law requires of this defendant.” The district court further noted, “Nothing has changed in terms of [Ramirez’s] attitude and manifestations in terms of how he would address or comply with the law.” The district court’s findings are based on two of the factors for which imprisonment is justified: that “confinement is necessary to protect the public from further criminal activity by the offender” and that “it would unduly depreciate the seriousness of the violation if probation were not revoked.” *Id.* (quotations omitted).

At one point in the hearing, the district court stated that commitment was the “only alternative.” In light of the context of this statement, we do not interpret it to be an abuse of discretion or a refusal to engage in discretionary decisionmaking. The district court made this comment when noting that Ramirez had committed the “very serious crime” of assisting in the sale of a large amount of a controlled substance and then “deliberately, intentionally, and consciously” re-entered the United States illegally. The district court

also voiced concerns about deterrence and public safety, which supported the conclusion that confinement was the appropriate result. Thus, the district court reasonably exercised its discretion in finding that the third *Austin* factor was satisfied.

In sum, the district court did not abuse its discretion by revoking Ramirez's probation and executing his prison sentence.

Affirmed.