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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1553**

State of Minnesota,
Respondent,

vs.

Richard R. Weiland,
Appellant.

**Filed September 9, 2008
Affirmed
Johnson, Judge**

Jackson County District Court
File No. KO-04-1089

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

Robert C. O'Connor, Jackson County Attorney, Jackson County Courthouse, 405 Fourth Street, Suite 2D, Jackson, MN 56143-1588 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Johnson, Presiding Judge; Toussaint, Chief Judge; and Halbrooks, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

In 2005, the district court imposed a 48-month prison sentence on Richard R. Weiland after he pleaded guilty to a charge of driving while impaired, but the district court stayed execution of the sentence and placed Weiland on probation. In 2007, however, the district court revoked the stay and executed the sentence. Weiland appeals, challenging the district court's findings of fact and its ultimate decision to revoke the stay. We affirm.

FACTS

On October 26, 2004, Weiland was charged in Jackson County District Court with first-degree driving while impaired (DWI), in violation of Minn. Stat. §§ 169A.20, subd. 1(1), .24, subds. 1(1), 2 (2004), and driving after cancellation (DAC), in violation of Minn. Stat. § 171.24, subd. 5 (2004). At the time, he had five prior DWI convictions. In January 2005, he pleaded guilty to the first-degree DWI charge, and the state dismissed the DAC charge.

At his sentencing hearing in February 2005, the district court sentenced Weiland to 48 months and imposed \$1,700 in fines and costs. The district court stayed execution of the sentence and placed Weiland on probation for up to seven years with nine special conditions that required him to (1) serve 365 days in jail, with work-release privileges; (2) complete at least 60 days of electronic home monitoring for at least the first three years on probation; (3) pay the \$1,700 in fines and costs; (4) complete a residential chemical treatment program following release from jail; (5) attend and complete a

Mothers Against Drunk Driving (MADD) Impact Panel; (6) provide proof of semi-weekly participation in Alcoholics Anonymous; (7) abstain from the use of alcohol and unprescribed mood-altering drugs; (8) provide a DNA sample; and (9) remain law-abiding.

In May 2007, Weiland was alleged to have committed five violations of the conditions of his probation: (1) a violation of the ninth special condition by failing to abide by all laws, due to new charges filed in Martin County of DAC and driving without proof of insurance; (2) a violation of the second special condition by failing to complete 60 days of electronic home monitoring each year; (3) a violation of the third special condition by failing to make payments on the fine; (4) a violation of the second general condition by failing to report to his probation officer; and (5) a violation of the sixth special condition by failing to attend Alcoholics Anonymous twice weekly.

At the conclusion of a May 25, 2007, hearing, the district court made the following oral findings:

You, Richard Randal Weiland, were first sentenced on the 28th day of February, 2005, for First Degree Driving While Impaired, a felony offense, and placed on certain terms of supervised probation. The Court finds that you have violated the terms of your probation by failing to complete 60 days of Electronic Home Monitoring each year, by failing to pay or work off your fine in this matter, by failing to abide by all laws, by failing to report to your agent as directed, and by failing to provide proof that you have attended Alcoholics Anonymous as directed. The Court finds that these violations under the circumstances here were intentional and inexcusable and that it would unduly depreciate the seriousness of your violation if the prison sentence were not imposed.

The district court repeated these findings verbatim in a written order. Accordingly, the district court revoked the stay and executed the 48-month sentence. Weiland 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). The supreme court has adopted a three-step analysis that must be completed by a district court before revoking probation. *Id.* at 250; *see also 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 if the district court states its findings and reasons on the record. *Id.* at 608 n.4.

A. First *Austin* Factor

The district court found that Weiland had committed each of the five alleged violations of the conditions of his probation. Weiland does not argue on appeal that the district court erred by finding that he committed these violations.

B. Second *Austin* Factor

Weiland argues that the violations of the conditions of probation were neither intentional nor inexcusable. His argument focuses on only two of the violations found by

the district court--the failure to complete the electronic home monitoring and the failure to pay the fine. Weiland argues that under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, the state may not revoke his probation if he is unable to satisfy the financial obligations of probation. In support of this proposition, Weiland cites *Bearden v. Georgia*, 461 U.S. 660, 103 S. Ct. 2064 (1983), a case in which the Supreme Court held that it was unconstitutional to revoke probation on the grounds that a probationer did not pay a fine if the probationer had not willfully refused to pay the fine or had made bona fide efforts to seek employment or otherwise obtain money to pay the fine. *Id.* at 672-74, 103 S. Ct. 2073-74. The Court explained that “if the probationer has made all reasonable efforts to pay the fine or restitution, and 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, 103 S. Ct. 2070-71 (footnote omitted).

Bearden is distinguishable from this case. Weiland was employed after his release from jail. Weiland contends that he was injured and, thus, unable to work for a period of time. But it also appears that he was not paying his fine or participating in electronic home monitoring even when he was healthy. Thus, the record would not support a finding that Weiland “made all reasonable efforts to pay the fine [but] cannot do so through no fault of his own.” *Id.* at 668, 103 S. Ct. 2070.

More importantly, probation was revoked in *Bearden* solely because the probationer did not pay a fine, 461 U.S. at 665, 103 S. Ct. 2069, but Weiland’s probation was revoked because of multiple violations, including three violations that are unrelated

to his financial situation. Most importantly, Weiland was alleged to have violated the law by driving after cancellation of his driver's license, which gave rise to separate charges. He admitted at the revocation hearing that he drove while knowing that his license had been cancelled. The district court also found that Weiland failed to report to his probation officer. Weiland's only explanation for that violation was that the man was not nice. The district court also found that Weiland failed to provide proof of attendance at Alcoholics Anonymous meetings. Weiland testified that he had been attending meetings but admitted that he had not provided the necessary verifications to his probation officer. None of these reasons or excuses rise to the level of making the probation violations either unintentional or excusable. In light of the evidence presented, we conclude that the district court did not abuse its discretion in finding that Weiland's probation violations were intentional and inexcusable.

C. Third *Austin* Factor

In challenging the district court's determination that the need for confinement outweighs the policies favoring probation, Weiland first argues that the district court failed to make sufficiently detailed findings. Weiland contends that the district court's statement that "it would unduly depreciate the seriousness of your violation if the prison sentence were not imposed" is insufficient to satisfy the third *Austin* factor. More specifically, Weiland argues in his brief that "[i]f the Supreme Court felt that the 'unduly depreciate' finding was the equivalent" of the determination that the need for confinement outweighs the policies favoring probation "it would have been simple enough for the Supreme Court to have said so."

In *Modtland*, the supreme court explained that the third *Austin* factor “prevents courts from reflexively revoking probation when it is established that a defendant has violated a condition of probation.” 695 N.W.2d at 608. The supreme court reiterated that, when determining whether the need for confinement outweighs the policies favoring probation, a district court may rest its decision on any of three alternative considerations:

- (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.

Modtland, 695 N.W.2d at 607 (quotation omitted). These considerations were first enumerated in *Austin*. 295 N.W.2d at 251 (citing A.B.A. Standards for Criminal Justice, Probation § 5.1(a) (Approved Draft 1970)).

In this case, the district court’s findings are sufficient to satisfy the third factor of *Austin*. Although not lengthy, the district court’s findings reflect that the district court considered whether the need for confinement outweighs the policies favoring probation and that the court did so by relying on one of the considerations approved by both *Austin*, 295 N.W.2d at 251, and *Modtland*, 695 N.W.2d at 607. The district court’s reasoning immediately follows its finding that Weiland had committed five violations of the conditions of his probation, including the finding that he drove after cancellation of his driver’s license.

Weiland further argues that, even if the district court's findings are sufficiently clear and detailed, the district court abused its discretion by concluding that the need for confinement outweighed the policies favoring probation. He argues that these were his first probation violations, that there were intermediate sanctions at the district court's disposal, and that the policies favoring probation outweigh the need for confinement.

The record reflects that Weiland had five prior DWI convictions. The record also reflects that Weiland had been on probation on at least two prior occasions. Although the district court could have imposed jail time, pursuant to Minn. Stat. § 609.135, subd. 1(a)(1), (b) (2006), in response to the probation violations, it was not unreasonable to decline to do so in light of Weiland's multiple probation violations and his recidivist behavior. Thus, the district court did not abuse its discretion by concluding that the need for confinement outweighed the policies favoring probation.

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

Affirmed.