**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A08-1192**

State of Minnesota,
Respondent,

vs.

Tavaris NMN Craig,
Appellant.

**Filed April 21, 2009**
**Affirmed**
**Connolly, Judge**

Ramsey County District Court
File No. 62-K3-07-003711

Lori Swanson, Attorney General, 445 Minnesota Street, Suite 1800, St. Paul, MN 55101; and

Susan Gaertner, Ramsey County Attorney, Mark Nathan Lystig, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 315, St. Paul, MN 55102 (for respondent)

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

Considered and decided by Hudson, Presiding Judge; Worke, Judge; and Connolly, Judge.

## U N P U B L I S H E D  O P I N I O N

**CONNOLLY**, Judge

Appellant pleaded guilty to first-degree driving while impaired. The district court, pursuant to a plea agreement, sentenced appellant to 72 months in prison, with a stay of execution and probation for 7 years on the condition that, among other things, appellant serve 1 year in the workhouse. Appellant failed to report to the workhouse and the district court revoked his probation and sent him to prison. Appellant challenges the district court's decision and argues that the district court did not comply with the requirements of *State v. Austin*. We affirm.

## FACTS

On December 17, 2007, appellant Tavaris Craig, a.k.a. Michael Anthony Dyson, pleaded guilty to felony first-degree driving while impaired.[1] The district court accepted the plea and sentenced appellant to 72 months in prison[2] but then stayed execution of the sentence for 7 years and placed appellant on probation with certain conditions including that appellant: undergo chemical health assessment, submit to random urinalysis and breath tests, and abstain from alcohol and nonprescribed mood-altering drugs. Another condition of appellant's probation was that he serve one year in the workhouse, with credit for time served. Appellant was given until March 6, 2008, to report to the

[1] Appellant had, among various other traffic-related incidents and criminal offenses, three prior DWI convictions.

[2] Based on appellant's criminal history score, the nondeparture range for appellant's offense was 51-72 months in prison. Minn. Sent. Guidelines IV.

workhouse. Appellant failed to report and was arrested on April 14, 2008, for violating the terms of his probation.

On April 17, 2008, a probation revocation hearing was held. At the hearing, appellant specifically admitted to violating his probation by failing to report to the workhouse, citing various personal reasons.[3] During the hearing, a probation officer with the Ramsey County Community Corrections Department recommended that appellant's stayed sentence be executed immediately. The district court agreed and ordered that appellant's stayed 72-month sentence be executed, with credit for time served. Appellant contends the district court erred because it did not make the required *Austin* findings. In the alternative, appellant contends that if the required *Austin* findings were made, then the district court abused its discretion in determining that the need for confinement outweighed the polices favoring probation. This appeal follows.

## D E C I S I O N

### I. The district court made the required findings under *State v. Austin* prior to revoking appellant's stayed sentence.

The district court has broad discretion in determining if there is sufficient evidence to revoke probation and will not be reversed absent an abuse of discretion. *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). 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).

[3] Appellant claimed that his grandmother was recently diagnosed with cancer and that he did not want to be in jail when she died.

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 *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." *Austin*, 295 N.W.2d at 251.

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), *review denied* (Minn. July 20, 1995), *abrogated by Modtland*, 695 N.W.2d 602. But *Modtland* abrogated the sufficient-evidence exception and required district courts 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. *Modtland,* 695 N.W.2d at 608. District courts "should not assume that 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.* To ensure a "thorough, fact-specific record[] setting forth [the] reasons for revoking probation," a district court should explain its substantive reasons for revocation and the evidence relied on in reaching that determination. *Id.* This court, therefore, will reverse a district court's revocation of probation in the absence of the

requisite findings, even if revocation is supported by sufficient evidence. *Id.* at 606. However, "[t]he '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." *Id.* at 608 n.4 (citing *Pearson v. State*, 308 Minn. 287, 292, 241 N.W.2d 490, 493 (1976)). Our review of the record indicates the district court made the required *Austin* findings.

A finding as to the first factor, whether or not a specific probation condition was violated, is not at issue. As a condition of probation the district court required appellant to serve one year at the workhouse starting March 6, 2008. Appellant failed to turn himself in on that date and admitted as much during his revocation hearing.[4] The district court also made this finding on the record when it stated "Mr. Dyson, you didn't turn yourself in to the workhouse on March 6th, 2008 to do your time . . . that didn't happen." As such, this factor is satisfied.

A finding as to the second factor, whether or not the violation was intentional or inexcusable is also not at issue. For a violation to be excusable there must be "extenuating circumstances." *State v. Johnson*, 679 N.W.2d 169, 177 (Minn. App. 2004). But in this case, appellant admitted that his violation was intentional:

> I wasn't trying to be irresponsible when I didn't come back to court. I was scared, sir, I was scared to go back to jail. One of the many reasons is if I go to jail – I am going to go now, but if I have to go do months, I am going to lose my grandma in prison. I didn't want to do that. I didn't want to be – she's got another four months to live. I didn't want to lose her

[4] Appellant's counsel stated: "Your honor, my client wishes to admit the violation."

> being in prison or being in jail. That was one of the many reasons . . . .

The record reflects that appellant failed to report to the workhouse as required and that his act of not appearing was deliberate.

In addition, this issue was clearly decided by the trial judge on the record. Appellant was given the opportunity to explain why he failed to turn himself in as directed and did in fact take that opportunity to do so. First, appellant's counsel stated the reasons. They included: (1) his grandmother was in the hospital with cancer and unconscious for an unspecified amount of days; (2) it was appellant's first probation violation; and (3) appellant has a two-year-old daughter. Appellant himself was then given the chance to explain himself, which he also did, giving myriad reasons as to why he failed to turn himself in: he is scared of jail; his two-year old would not let him hold her until it was almost time to report; he just started to get close to his family; he has a drinking habit; he was trying to live a normal life for the two weeks he was out of jail and it was hard to turn himself in after doing that; he does not have any help; he is not a bad person; he is sick (depressed); he has already been to jail for most of his 20s and it has not helped him; and he is remorseful. The district court, after considering this testimony, stated "by your own admission, Mr. Dyson, you didn't turn yourself in to the workhouse on March 6th, 2008 to do your time . . . that didn't happen. It is without legal excuse or justification, obviously." Even if the reasons proffered by appellant were considered extenuating, the district court is not required to believe unsubstantiated excuses. As such, a finding as to this factor was sufficiently stated on the record as required by *Austin*.

A finding as to the final factor, whether the need for confinement outweighs the policies favoring probation, is also sufficiently stated on the record. The district court provided, on the record, at least two of the three factors given in *Austin* to help satisfy the third required finding. First, the record shows that the district court believed confinement was necessary to protect the public from further criminal activity by appellant. The district court first took into account appellant's past criminal history and the fact that appellant had been given several chances to reform his behavior, yet failed to take advantage of them. The district court stated, "the need for treatment in a confined space is the reason why this sentence is executed and, moreover, to begin with, it was an executed sentence at the outset given your criminal history."[5] Moreover, the district court explained that appellant needed to be confined to receive correctional treatment. While explaining the sentence to appellant, the district court explicitly stated, on the record, appellant's need for confined correctional treatment. The district court stated, "I think that treatment is necessary in a confined space because for the prior three DWIs [treatment out of confinement] did not seem to work . . . the need for treatment in a confined space is the reason why this sentence is executed." Therefore, the district court made the required findings on the record to satisfy the third factor of *Austin*.

Based on the record, the district court made the necessary findings, which are sufficient for appellate review, and are not clearly erroneous.

[5] It should also be noted that prior to placing appellant on probation the district court warned appellant that he was "on a short leash" due to the fact that appellant "present[ed] a danger to society when [he was] out there drinking and driving."

## II. The district court did not abuse its discretion in determining that the need for confinement outweighed the policies favoring probation.

The district court has broad discretion when determining whether probation should be revoked and will not be reversed unless there is a clear abuse of discretion. *Austin*, 295 N.W.2d at 249-50. While appellant made arguments to the district court as to why his probation should not be revoked, the district court did not abuse its discretion by rejecting those arguments. The purpose of the required *Austin* findings is to make sure that the district court's "decision to revoke is based on sound judgment" rather than merely a "reflexive reaction" as claimed by appellant. *Id.* at 251. The district court's on-the-record analysis explaining why the need for confinement outweighed the policies favoring probation, discussed in the previous section, establishes that the district court did not clearly abuse its discretion when revoking appellant's probation.

Nonetheless, appellant argues that the record does not demonstrate that the need for confinement outweighs the policies favoring probation. Appellant's argument consists largely of an analysis of the facts of this case and discussion of possible alternatives to revocation that the district court could have considered. Appellant argues that the district court's decision to revoke was a reflexive reaction and that appellant's arguments against revocation were not discussed on the record, and, therefore, the district court's decision constituted an abuse of discretion.[6]

[6] Appellant alludes to "a failure to exercise [] discretion" on the part of the district court, and cites two cases dealing with the use of Minnesota's Sentencing Guidelines, *State v. Abeyta*, 328 N.W.2d 443 (Minn. 1983) and *State v. Curtiss*, 353 N.W.2d 262 (Minn. App. 1984). Both cases are distinguishable because the district court either completely failed to exercise discretion or failed to take into account significant and legitimate reasons for

The district court's decision was not a reflexive reaction as appellant contends. The district court did address, on the record, why it chose to revoke the sentence—mainly because it felt that appellant needed "treatment in a confined space" in order to receive any benefit. The district court heard arguments as to why probation should not be revoked, and rejected those arguments based on the fact that treatment outside of jail "for the prior three DWIs did not seem to work." Further, the district court already exercised its discretion by granting an alternative to prison when it originally stayed execution of the 72-month sentence and put appellant on probation. Conditions of probation included, among other things, the intermediate sanction of incarceration at the workhouse. *See* Minn. Stat. § 609.135 subd. 1(a), (b) (2006) (allowing the imposition of intermediate sanctions when an offender is subject to a sentence other than a mandatory life or mandatory minimum sentence). It was this intermediate sanction that appellant refused to comply with by not reporting to the workhouse.

As such, the district court did not abuse its discretion in concluding the need for confinement outweighed the policies favoring probation.

**Affirmed.**

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departure. In the present case, the district court did in fact exercise its discretion and take into account all the alleged circumstances.