STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2236

State of Minnesota,
Respondent,

vs.

John Raymond Boshey,
Appellant.

Filed November 17, 2009
Reversed and remanded
Kalitowski, Judge

St. Louis County District Court
File No. 69DU-CR-06-6796

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

Melanie Ford, St. Louis County Attorney, Mark S. Rubin, Assistant County Attorney, 100 North Fifth Avenue West, #501, Duluth, MN 55802-1298 (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Cathryn Middlebrook, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for respondent)

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

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

KALITOWSKI, Judge

Appellant John Raymond Boshey challenges the district court's order revoking his probation, arguing that the court failed to make sufficient written or oral findings of fact on the record to support its decision. We reverse and remand.

D E C I S I O N

District courts have broad discretion to determine whether there is sufficient evidence to revoke probation, and will only be reversed for abuse of discretion. *State v. Ornelas*, 675 N.W.2d 74, 79 (Minn. 2004). But whether the district court has 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).

The Minnesota Supreme Court has explained the importance of careful consideration before revoking probation, stating that "[t]he purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed." *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). To ensure this careful consideration, the supreme court established a three-step analysis that a court must complete before revoking probation. *Id.* The district court must: (1) designate the specific condition or conditions of probation the probationer violated; (2) find that the violation was intentional or inexcusable; and (3) find that the need for confinement outweighs the policies favoring continued probation. *Id.* The court must balance the probationer's interest in freedom with the state's interest in rehabilitating offenders and ensuring the public safety. *Id.*

In the 25 years following *Austin*, courts developed a sufficient-evidence exception to the *Austin* findings requirement, whereby appellate courts reviewed the district courts' revocation decisions based on the sufficiency of all of the evidence in the record. *Modtland*, 695 N.W.2d at 606. But in *Modtland*, the Minnesota Supreme Court rejected this exception, holding that district courts must specifically and expressly address each of the three *Austin* factors. *Id.* at 606. The *Modtland* court admonished that "it is not the role of appellate courts to scour the record to determine if sufficient evidence exists to support the district court's revocation." *Id.* at 608. Thus, under *Modtland*, we are compelled to reverse a district court's probation revocation if it lacks the requisite *Austin* findings.

Here, the record indicates that appellant (1) was convicted of first-degree arson at both entrances to a home where children were present; (2) received a downward dispositional departure and was placed on probation; and (3) admitted to multiple probation violations. But although there may be sufficient evidence on the record to satisfy the *Austin* factors, the district court failed to make the requisite findings on the second and third *Austin* factors. Because the Minnesota Supreme Court mandated in *Modtland* that this court cannot affirm a district court probation revocation that is not supported by specific findings on the record as to all three *Austin* factors, we reverse and remand for the necessary findings.

Reversed and remanded.