

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2044**

State of Minnesota,
Respondent,

vs.

N. R. S.,
Appellant.

**Filed August 10, 2010
Reversed and remanded
Kalitowski, Judge**

Blue Earth County District Court
File No. 07-JV-08-509

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Ross Arneson, Blue Earth County Attorney, Casey M. Hardy, Assistant County Attorney,
Mankato, Minnesota; and

Robert D. Hinnenthal, Brown County Attorney, John L. Yost, Assistant County Attorney,
New Ulm, Minnesota (for respondent)

Mark E. Betters, Mankato, Minnesota (for appellant)

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

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant N.R.S. challenges the district court's decision to revoke his extended
jurisdiction juvenile (EJJ) probation. The state has not filed a respondent's brief, and the

matter is proceeding pursuant to Minn. R. Civ. App. P. 142.03. Because the district court erred in failing to consider the *Austin* factors in this EJJ proceeding, we reverse and remand.

D E C I S I O N

Based on an incident that occurred in April 2007, appellant, who was 16 at the time, was certified for prosecution as an adult. Under the terms of a plea agreement, appellant was given EJJ status and a delinquency petition was filed charging him with first-degree burglary involving a dangerous weapon.¹ In October 2007, the district court placed appellant on EJJ probation and stayed the 48-month presumptive adult sentence. The matter was transferred from Brown County, where the offense occurred, to Blue Earth County, where appellant resided.

In September and December 2008, appellant twice violated the terms of his probation, but his probation was not revoked. In May 2009, appellant violated his probation a third time when he failed a drug test. At a probation violation hearing in July 2009, appellant admitted that he violated probation by using marijuana and alcohol. The matter was continued to allow appellant to enter inpatient chemical dependency treatment.

Appellant entered and successfully completed treatment, and his ensuing drug tests were negative. At a hearing in Blue Earth County in September 2009, the district

¹ In his brief, appellant states that he was convicted of second-degree burglary – dangerous weapon, but it appears that he was charged and adjudicated delinquent of first-degree burglary under Minn. Stat. § 609.582, subd. 1(b) (2006) (defining first-degree burglary as entering building without consent and committing crime while possessing dangerous weapon).

court concluded that appellant had been given enough chances and that his probation should be revoked. The district court found that revocation was in appellant's "best interest" and was the "least restrictive alternative." The court did not make findings regarding, nor did either party present argument or evidence on, the *Austin* factors. The district court transferred the matter to Brown County, the county where the offense occurred, for adult sentencing. Sentencing has apparently been stayed pending this appeal.

Appellant argues that the district court erred in revoking his EJJ probation without considering the *Austin* factors and in relying on the "best interest of the juvenile" and the "least restrictive alternative." We agree. The "best interest" and "least restrictive alternative" are relevant when determining whether to revoke probation in a juvenile setting. See *In re Welfare of R.V.*, 702 N.W.2d 294, 304 (Minn. App. 2005) (holding that district court need not follow the three-step probation revocation analysis set forth in *Austin* when revoking a juvenile's probation, but must make sufficient written findings that address why a particular disposition serves the juvenile's best interests, what alternative dispositions were considered, and why those alternatives were rejected). But in the EJJ context, "all three of the *Austin* factors must be considered when a court is determining whether reasons exist to revoke the stay." *State v. B.Y.*, 659 N.W.2d 763, 768-69 (Minn. 2003) (quotation omitted).

Austin requires a district court to perform the following analysis before it revokes probation: (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. *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). The court must make specific findings that “convey [its] substantive reasons for revocation and the evidence relied upon,” rather than simply “reciting the three factors and offering general, nonspecific reasons for revocation.” *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005). Because the district court failed to make any express findings under *Austin*, this matter is reversed and remanded for further proceedings. *See id.*

The record indicates that the parties did not present evidence or argument on the *Austin* factors, and that the district court did not consider these factors. Thus, on remand, the parties should be given an opportunity to present additional evidence, including evidence on appellant’s updated and current circumstances, in such proceedings as the district court deems appropriate.

Reversed and remanded.