

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-310**

State of Minnesota,  
Respondent,

vs.

B. J. H.,  
Appellant.

**Filed December 12, 2011  
Affirmed  
Schellhas, Judge**

Rice County District Court  
File Nos. 66-JV-07-3746, 66-CR-10-3446

David W. Merchant, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

G. Paul Beaumaster, Rice County Attorney, Benjamin Bejar, Assistant County Attorney, Faribault, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Schellhas, Judge; and Crippen, Judge.\*

---

\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the district court's revocation of his extended-jurisdiction-juvenile (EJJ) probation and execution of his stayed adult sentences, arguing that the district court erred by finding that the need for confinement outweighs the policy favoring probation. We affirm.

### FACTS

In October 2007, respondent State of Minnesota charged appellant B.J.H., who was 17 years old, with three counts of first-degree burglary in violation of Minn. Stat. § 609.582, subd. 1(a)–(c) (2006), second-degree assault in violation of Minn. Stat. § 609.222, subd. 1 (2006), terroristic threats in violation of Minn. Stat. § 609.713, subd. 1 (2006), and fifth-degree assault in violation of Minn. Stat. § 609.224, subd. 1(2) (2006). The amended juvenile petition alleged that B.J.H. broke into the apartment of a female with whom he had a sexual relationship, assaulted a male who was in bed with her, threatened to kill him while holding a 10-inch knife, and verbally abused the female.

B.J.H. pleaded guilty to first-degree burglary while possessing a dangerous weapon in violation of Minn. Stat. § 609.582, subd. 1(b), and to second-degree assault. The district court adjudicated B.J.H. an EJJ;<sup>1</sup> imposed concurrent, stayed sentences of 58

---

<sup>1</sup> “An EJJ prosecution is a blending of juvenile and adult criminal dispositions that extends jurisdiction over a young person to age twenty-one and permits the court to impose both a juvenile disposition and a criminal sentence.” *State v. J.E.S.*, 763 N.W.2d 64, 67 (Minn. App. 2009) (quotation omitted). The disposition in an EJJ case imposes an adult sentence but stays that sentence “so long as the offender does not violate the

months' imprisonment for first-degree burglary and 33 months' imprisonment for second-degree assault; and imposed a juvenile disposition that included a commitment to the Minnesota Commissioner of Corrections–Red Wing Correctional Facility until age 21. The court conditioned the stayed adult sentences on B.J.H. “successful[ly] completi[ng] the juvenile sentence imposed” and committing “no further offenses.”

In January 2009, the commissioner paroled B.J.H. after he was unsuccessfully discharged from a furlough at a chemical-dependency halfway house. The commissioner imposed various conditions of parole, including maintaining employment; maintaining all appointments with the parole agent; keeping the parole agent informed of his current address, phone number, and employment; abstaining from use or possession of alcohol and controlled substances; and submitting to random urinalysis.

On February 10, 2009, B.J.H. pleaded guilty to fifth-degree assault in violation of Minn. Stat. § 609.224, subd. 1(2) (2008), for an offense committed on January 23, 2009. On December 6, 2009, a law enforcement officer cited B.J.H. for underage drinking and driving in violation of Minn. Stat. § 169A.33, subd. 2 (2008), and minor consumption of alcohol in violation of Minn. Stat. § 340A.503, subd. 1(a)(2) (2008). The district court issued a warrant for B.J.H.'s arrest after he failed to appear for a pretrial hearing on August 26, 2010. On October 8, 2010, the charges were still pending. On September 27, 2010, B.J.H. pleaded guilty to fifth-degree assault in violation of Minn. Stat. § 609.224, subd. 2(b) (2008), for an offense committed on January 31, 2010.

---

provisions of the juvenile disposition and does not commit a new offense.” *Id.* (quotation omitted).

On May 7, 2010, the state moved to revoke B.J.H.'s probation and execute the adult sentences. The state alleged that B.J.H. had committed new offenses in violation of the disposition order and violated the conditions of his parole.

Following a two-day evidentiary hearing, the district court issued findings of fact, conclusions of law, and an order revoking B.J.H.'s probation and ordering him to appear for sentencing on November 18, 2010. In addition to B.J.H.'s new offenses, his parole agent testified that B.J.H. missed appointments, missed drug tests, tested positive for marijuana four times, failed to timely notify her of address and employment changes, failed to disclose his citation for underage drinking and driving and minor consumption, and at one point did not contact her for several months. The court found that B.J.H. violated the conditions of his stayed sentences by committing two new offenses, that "the violations were intentional and inexcusable," that the need to confine B.J.H. outweighed the policies favoring probation, and that mitigating factors justifying continuing the stay did not exist. On November 18, the court executed B.J.H.'s adult sentences.

This appeal follows.

## **D E C I S I O N**

In *State v. Austin*, the Minnesota Supreme Court established a three-step analysis that must be applied by a district court before revoking probation. 295 N.W.2d 246, 250 (Minn. 1980); *State v. Modtland*, 695 N.W.2d 602, 606 (Minn. 2005) (citing *Austin*). 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.

The three *Austin* factors apply to EJJ revocation proceedings. *State v. B.Y.*, 659 N.W.2d 763, 768–69 (Minn. 2003). A violation of the terms and conditions of probation must be proven by clear and convincing evidence. Minn. R. Juv. Delinq. P. 19.11, subd. 3(C)(1).

In a juvenile probation revocation proceeding, the district court must “make written findings of fact on all disputed issues including a summary of the evidence relied upon and a statement of the court’s reasons for its determination.” *Id.*, subd. 3(E). A reviewing court should reverse if it finds that the district court revoked without making the three findings required by *Austin*. See *Modtland*, 695 N.W.2d at 607–08. District courts must “convey their substantive reasons for revocation and the evidence relied upon.” *Id.* at 608. Whether a district court made the findings required under *Austin* presents a question of law, which this court reviews de novo. *Id.* at 605. When a district court has set forth its reasoning, rather than simply “reciting the three factors and offering general, non-specific reasons for revocation,” a reviewing court should affirm absent a clear abuse of discretion. *Id.* at 605, 608; *Austin*, 295 N.W.2d at 249–50.

B.J.H. argues that the district court “failed to justify why confinement was not outweighed by the policies favoring probation.” The Minnesota Supreme Court noted in *Modtland* that, when making the third *Austin* finding, “courts must balance ‘the probationer’s interest in freedom and the state’s interest in insuring his rehabilitation and the public safety.’” 695 N.W.2d at 606–07 (quoting *Austin*, 295 N.W.2d at 250). The third factor is determined by considering whether “confinement is necessary to protect the public from further criminal activity by the offender”; “the offender is in need of correctional treatment which can most effectively be provided if he is confined”; or “it

would unduly depreciate the seriousness of the violation if probation were not revoked.”  
*Id.* at 607.

After correctly citing the applicable law, the district court found that “[t]he need to confine [B.J.H.] outweighs the policies favoring probation.” In support of its finding, the court noted that “[t]he offense for which [B.J.H.] was initially sentenced was a very serious residential break-in and assault”; he “has a significant history of assaultive behavior”; he “committed two new assaults”; he “continued to use marijuana and alcohol and has made only scant efforts to pursue treatment”; and “[h]e maintained only sporadic contact with his probation officer and failed to inform her, as instructed, of significant events such as his citation for underage drinking and driving and his discharge from employment.”

The record reflects that the district court carefully considered the evidence and found that the need for confinement outweighs the policies favoring probation. The court made detailed findings of fact regarding B.J.H.’s history on probation. The court recounted B.J.H.’s serious crimes, his new offenses, and his minimal efforts pursuing treatment. Based on B.J.H.’s conduct, the district court found that B.J.H. “is a danger to the public and that he is not amenable to probation” and “[a]ny treatment needs he may have would best be served in a custodial setting because he has not shown the ability to complete outpatient treatment on his own or to comply with reasonable terms of parole supervision.” The court’s findings are fully supported by the record.

After making the required *Austin* findings, if the EJJ conviction was for an offense with a presumptive prison sentence, a juvenile court *must* execute the sentence *unless* it

finds mitigating factors that justify continuing the stay. Minn. R. Juv. Delinq. P. 19.11, subd. 3(C)(3). “Mitigating factors include amenability to treatment, successful completion of a treatment program, and whether the violations show a potential for recidivism.” *J.E.S.*, 763 N.W.2d at 69 (citing *B.Y.*, 659 N.W.2d at 770).

At the time of the EJJ conviction, B.J.H. had a criminal-history score of one, and first-degree burglary while possessing a dangerous weapon is a severity-level-eight offense. Minn. Sent. Guidelines V (Supp. 2007). The presumptive sentence for a severity-level-eight offense with a criminal-history score of one is 58 months’ imprisonment. Therefore, the district court was required to execute B.J.H.’s sentence unless it found mitigating factors that justified continuing the stay. The court found that no mitigating factors existed, B.J.H. is not challenging the court’s finding, and we discern no basis for any challenge.

Because the district court made the required *Austin* findings, set forth its reasoning, and found no mitigating factors existed that justified continuing the stay, the court did not abuse its discretion by revoking B.J.H.’s probation and executing his adult sentences.

**Affirmed.**