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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1637**

State of Minnesota,
Respondent,

vs.

Steffon Titus Jennings,
Appellant.

**Filed March 11, 2013
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-CR-08-32750

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

Michael O. Freeman, Hennepin County Attorney, Elizabeth Johnston, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sean M. McGuire, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Stauber, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

In this case, appellant challenges his probation revocation, arguing that the district court abused its discretion by failing to make the appropriate findings on the record and by revoking his probation. Because the district court made sufficient findings under *Austin*, we affirm.

FACTS

Appellant Steffon T. Jennings was charged with being a prohibited person in possession of a firearm and second-degree assault in July 2008. Appellant petitioned to plead guilty to the charge of being a prohibited person in possession of a firearm in exchange for the state's dismissal of the assault charge and a probationary sentence of 60 months stayed with 365 days in the workhouse. Appellant's stayed sentence was a dispositional departure, which the district court granted after finding that appellant was amenable to probation. Appellant was ordered to comply with all of the terms of probation, including the requirements that he refrain from alcohol or controlled-substance use, comply with random drug testing, and remain law abiding.

In February 2010, appellant failed to return to the workhouse after his furlough release, and in January 2011 was charged with felony escape from custody. In February 2011, appellant was ordered to take a drug test and he tested positive for marijuana and cocaine. The district court held a probation-violation hearing and appellant waived a formal *Morrissey* hearing and admitted to the violations. The district court revoked appellant's probation and executed his 60-month sentence.

He then appealed, and this court reversed the revocation. By order opinion, we held that, “[a]lthough the district court stated several appropriate reasons for revocation, it did not make the requisite *Austin* findings.” *State v. Jennings*, No. A11-1394 (Minn. App. Mar. 14, 2012). We remanded the case back to the district court, directing it to make “findings consistent with the requirements of *Austin* and *Modtland*.” *Id.*

On remand, appellant argued that the policies favoring probation outweighed the need to execute his sentence. Respondent asked the court to execute appellant’s sentence, noting that his conviction carried a mandatory prison sentence and that his repeated violations of conditional release and of his probation demonstrated that there were no mitigating factors justifying a probationary sentence. At the June 19, 2012 hearing, the district court revoked appellant’s probation and again executed his stayed 60-month sentence. The district court explained:

The transcript indicated that [appellant] admitted the two probation violations on the A & D, specifically that he was using non-prescribed and illegal substances while on probation and that he failed to remain law-abiding by picking up the escape from the workhouse charge. From his own admission, I’m finding that those violations were intentional and inexcusable; that he intended to leave and he’s intended to continue to use illegal substances.

The presumptive sentence for this offense was 60 months in prison. And despite the fact that [appellant] violated his conditional release prior to his guilty plea, had positive UA’s at that time, lied to the conditional release officer about taking a UA that he did not take, the fact that he failed to appear for the preplea investigation, he failed to appear for his sentencing—despite all those facts, I gave him a chance and put him on probation.

[Appellant], you were sent to the workhouse, you were given a furlough, and you left and did not come back to the workhouse, and you never came back until you were caught months later. You were charged

with a new felony escape from custody. And when this whole issue about whether your sentence should be revoked or whether I should keep you on probation was finally heard in court on February 28th, 2011, I ordered you to do a UA. And UA indicated to me that you were using marijuana and cocaine and continuing to engage in illegal activities.

And what you've proven to me is that the PSI writer was right. You're a poor candidate for probation. You have failed to follow the rules of probation. You've disappeared for months at a time. *And for those reasons I'm finding that you are not amenable to probation and that you are in need of a correctional treatment which can most effectively be provided if you are confined. And for those reasons I am revoking your 60-month sentence and giving you credit for the time you've now served*

(Emphasis added). This appeal follows.

DECISION

“The [district] 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). But the sufficiency of the district court's findings under *Austin* is a question of law, subject to de novo review. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

Before the district court may revoke a defendant's probation and execute a stayed sentence, the district court must “(1) designate the specific condition or conditions that were violated; (2) find that the violation was intentional or inexcusable; and (3) find that need for confinement outweighs the policies favoring probation.” *Austin*, 295 N.W.2d at 250. The third factor is satisfied if the district court finds that

(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.

Id. at 251.

The district court must seek to convey the substantive reasons for revocation and the evidence relied upon. *Modtland*, 695 N.W.2d at 608. A district court “should not assume that [it has] satisfied *Austin* by reciting the three factors and offering general, non-specific reasons for revocation.” *Id.* This procedure ensures that the district court does not “reflexively revoke[]” probation when a probation violation is established. *Id.*

Appellant argues that the district court abused its discretion by revoking his probation because it failed to make the required *Austin* finding that the policies favoring probation were outweighed by the need for confinement. But this third *Austin* factor—that the need for confinement outweighed the policies favoring probation—is satisfied if there is a showing that “the offender is in need of correctional treatment which can most effectively be provided if he is confined.” *Austin*, 295 N.W.2d at 251. Here, the district court specifically found that appellant is “not amenable to probation” and is “in need of a correctional treatment which [could] most effectively be provided if [appellant was] confined.”

Appellant also argues that the district court abused its discretion in revoking his probation because the evidence in the record did not demonstrate that the need for his confinement outweighed the policies favoring probation. But the record supports the district court’s finding that appellant is not amenable to probation and is in need of correctional treatment. Appellant failed to remain law abiding and committed new offenses while on probation, including using drugs and failing to return to the workhouse

while on probation. These actions demonstrated that he is not amenable to probation and is in need of correctional treatment. *See, e.g., State v. Hamilton*, 646 N.W.2d 915, 916-19 (Minn. App. 2002) (upholding revocation under the third *Austin* factor where defendant violated the conditions of probation for the underlying conviction three times, and all of the violations involved criminal behavior), *abrogated in part on other grounds by Modtland*, 695 N.W.2d at 606; *see also* Minn. Sent. Guidelines 3.B (2011) (revocation of a stayed sentence is generally justified if “the offender persists in violating conditions of the stay”).

Affirmed.