

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0112**

State of Minnesota,
Respondent,

vs.

Michael Donald Caya,
Appellant.

**Filed August 29, 2022
Affirmed
Worke, Judge**

Nicollet County District Court
File No. 52-CR-19-305

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michelle M. Zehnder Fischer, Nicollet County Attorney, Megan E. Gaudette Coryell,
Assistant County Attorney, St. Peter, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leah C. Graf, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Gaïtas, Judge; and Smith,
John P., Judge.*

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

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant argues that the district court abused its discretion by revoking his probation. We affirm.

FACTS

In 2019, the state charged appellant Michael Donald Caya with 12 criminal charges, including first-degree controlled-substance sale of 17 grams or more of methamphetamine, controlled-substance sale in a school/park/public-housing zone, controlled-substance possession, and ineligible person in possession of a firearm. Caya's presumptive sentence was 125 months in prison.

In January 2021, Caya pleaded guilty to first-degree controlled-substance sale. The remaining charges were dismissed. The district court sentenced Caya to 140 months in prison, stayed for 15 years—a dispositional departure based on the parties' agreement. The district court imposed probationary conditions, which included following all criminal laws, abstaining from the use of illegal drugs and alcohol, and submitting to random testing for drugs and alcohol.

In October 2021, Caya allegedly violated his probation by using methamphetamine and attempting to use a “Whizzinator”¹ to circumvent his drug test. At a probation-revocation hearing, the district court stated: “The allegation is that you used

¹ A synthetic urine kit.

methamphetamine after the Court has ordered you not to do so.” Caya admitted that he used methamphetamine. Caya’s probation officer recommended revoking probation. The state requested that the district court revoke Caya’s probation because he has five felony convictions; he pleaded guilty to first-degree controlled-substance sale, which is a serious offense; he received a dispositional departure; and immediately after he completed extensive therapy he used methamphetamine, which shows that he is not amenable to probation.

Caya stated that he was under stress because it was difficult to connect with his family when he returned home from therapy, and he was not maintaining his production at work. He stated that he turned to someone that he thought was sober and was caught off guard when he discovered this person was not. He admitted, “I made a terrible choice. I tried to hide that choice, which made it so much worse.” But Caya stated that he did not run away, and he did not commit another crime.

The district court found that Caya violated probation “by using methamphetamine and not being honest with [his] probation agent.” In considering whether Caya was a “public safety risk and whether [his] violation was willful and inexcusable,” the district court stated:

I know that you have a drug addiction problem. That part I can understand. And that part I might be able to excuse. But the fact that you tried to . . . deceive your agent by using the Whizzinator indicates to me that this was planned. Because I don’t have a Whizzinator in my house. And . . . that indicates it’s criminal behavior and a willful and intentional violation of probation.

. . . .

You are dangerous when you're using, and when you're willfully using and tried to hide it. If you would have come in and said "Oh, my gosh, I messed up. I don't know what to do. Get me back into treatment." If you would have done anything like that, my decision would have been different. But the fact that you tried to conceal it, that concerns me greatly.

The district court considered Caya's criminal history and public safety before revoking Caya's probation and executing his sentence. This appeal followed.

DECISION

Caya argues that the district court abused its discretion by revoking his probation. "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). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

Before it revokes probation, a 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 [the] need for confinement outweighs the policies favoring probation." *Austin*, 295 N.W.2d at 250. This court reviews de novo whether the district court made the findings required to revoke probation. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

Caya argues that the district court erred on the first *Austin* factor because it found that he violated the condition that he be honest with his probation officer when it was not imposed as a condition of the stayed sentence.

A district court may revoke probation “[w]hen it appears that the defendant has violated any of the conditions of probation . . . or has otherwise been guilty of misconduct which warrants the imposing or execution of sentence.” Minn. Stat. § 609.14, subd. 1(a) (2020). But “before a probation violation can occur, the condition alleged to have been violated must have been a condition actually imposed by the court.” *State v. Ornelas*, 675 N.W.2d 74, 80 (Minn. 2004).

The district court imposed the condition of no use of illegal drugs and alcohol. At the probation-revocation hearing, the district court stated: “The allegation is that you used methamphetamine after the Court has ordered you not to do so.” Caya admitted that he used methamphetamine. The district court found that Caya violated the terms of his probation “by using methamphetamine and not being honest with [his] probation agent.”

The district court’s finding that Caya violated probation by using methamphetamine satisfies the first *Austin* factor because only one violation is needed to support the district court’s decision to revoke probation. *See* 295 N.W.2d at 250 (stating that district court must first “designate the specific *condition or* conditions that were violated” (emphasis added)).

Caya next argues that the district court erred on the second *Austin* factor because it found that he was intentionally dishonest with his probation officer, but honesty was not

an imposed condition. *See id.* (stating that district court must “find that the violation was intentional or inexcusable”).

The district court found that Caya’s use of methamphetamine and then his deceptive act of trying to use the Whizzinator indicated that “this was . . . planned” and that “it’s criminal behavior and a willful and intentional violation of probation.” Caya appears to argue that the district court found that he planned for and acted intentionally only with respect to his dishonesty. While Caya may have planned to be dishonest, it was dishonesty that caused him to hide his methamphetamine use. The district court determined that Caya planned to use and cover it up, indicating that his use was an intentional violation and not merely a relapse.

Caya used methamphetamine, he had a Whizzinator available to him, and he brought the Whizzinator to his testing. The district court stated that the plan showed “criminal behavior and a willful and intentional violation.” Deception alone is not “criminal behavior”; possessing and using methamphetamine is. Thus, Caya’s argument that the district court found only his dishonesty intentional does not follow the totality of the district court’s finding.

Additionally, Caya admitted that he “made a terrible choice. . . . [and] tried to hide that choice, which made it so much worse.” When one makes a “choice” they are acting to select one option over another, which is generally done deliberately (intentionally). The record shows that the district court found Caya’s violation of using methamphetamine intentional.

Caya also argues that the district court erred on the third *Austin* factor because it failed to find that the need for confinement outweighed the policies favoring probation. *See id.* (stating that district court must “find that [the] need for confinement outweighs the policies favoring probation”).

In considering the third *Austin* factor, district courts must balance “the probationer’s interest in freedom and the state’s interest in insuring his rehabilitation and the public safety.” *Modtland*, 695 N.W.2d at 607 (quotation omitted). In deciding whether confinement is necessary, a district court should evaluate whether 1) confinement will protect the public, or 2) correctional treatment will most effectively meet the offender’s treatment needs, or 3) the seriousness of the violation would be unduly depreciated if probation is continued. *Id.* Revocation is justified when the district court finds that one of these subfactors is satisfied. *See id.*; *Goldman v. Greenwood*, 748 N.W.2d 279, 283 (Minn. 2008) (stating that “the conjunction ‘or’ [i]s disjunctive rather than conjunctive”).

Caya argues that the district court failed to conduct a proper analysis. But the district court stated that it looked at Caya’s criminal history, which includes five felony convictions. The district court found Caya to be dangerous when he is “willfully using” methamphetamine and trying to conceal it. The district court emphasized that its decision to revoke probation was a “public safety issue.” *See Modtland*, 695 N.W.2d at 607 (stating that a district court may consider whether confinement will protect the public). The district court made adequate findings that the need for confinement outweighed the policies favoring probation.

Finally, Caya argues that the record supports continuing his probation. Caya argues that he was successful in the community, and he should be allowed to participate in “relapse programming.” The record shows that Caya was doing well in the community until he violated his probation. But a district court does not abuse its discretion because it declines to allow a probationer to receive additional services. *See State v. Osborne*, 732 N.W.2d 249, 255 (Minn. 2007) (concluding that district court did not abuse its discretion by revoking probation without giving offender an opportunity to seek additional probationary resources).

Additionally, Caya was charged with 12 criminal offenses. He pleaded guilty to a serious felony, and his sentence was a presumptive commit. He received a downward dispositional departure. The district court stated: “I agreed to depart . . . to give you an opportunity to participate in treatment and try to turn things around.” The district court properly considered its decision to depart in determining whether Caya had been successful in treatment and if revocation was necessary. *See State v. Moot*, 398 N.W.2d 21, 24 (Minn. App. 1986) (affirming probation revocation when district court granted a downward departure to permit offender a final attempt to succeed at treatment), *rev. denied* (Minn. Feb. 13, 1987).

The decision to revoke requires a showing that the “offender’s behavior demonstrates that he . . . cannot be counted on to avoid antisocial activity.” *Austin*, 295 N.W.2d at 251 (quotation omitted). The district court found that Caya cannot be counted on to avoid criminal behavior, which poses a risk to the public. Furthermore, Caya violated his probation by using methamphetamine. The purpose of probation is rehabilitation, and

Caya's continued use after he completed long-term treatment demonstrates that probation failed to accomplish this purpose. Caya's statement that he relapsed because he was feeling stress after completing treatment shows that community programming failed. The district court did not abuse its discretion by revoking Caya's probation.

Affirmed.