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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1098**

State of Minnesota,
Respondent,

vs.

Patrick Terrance Stark,
Appellant.

**Filed April 14, 2009
Affirmed
Hudson, Judge**

St. Louis County District Court
File No. 69-K8-03-600759

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

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

Lawrence Hammerling, Chief Appellate Public Defender, F. Richard Gallo, Jr., Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, Minnesota 55104 (for appellant)

Considered and decided by Worke, Presiding Judge; Hudson, Judge; and Connolly, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

On appeal from the revocation of his probation, appellant argues that the district court failed to make the findings required to revoke his probation. Appellant also argues that the district court revoked his probation on the basis of insufficient evidence. We affirm.

FACTS

On November 17, 2003, appellant Patrick Terrance Stark pleaded guilty to one count of assault in the first degree in violation of Minn. Stat. § 609.221 (2002). The district court sentenced appellant to 86 months of imprisonment, but stayed the execution of appellant's sentence and placed appellant on probation for seven years. On July 13, 2005, the district court placed appellant in chemical-dependency treatment after appellant violated the terms of his probation. On March 21, 2006, the district court extended appellant's probation term to eight years after appellant again violated the terms of his probation.

On March 21, 2008, appellant admitted to using marijuana and methamphetamines, thereby violating the terms of his probation for a third time. The district court revoked appellant's probation and executed appellant's 86-month sentence. This appeal follows.

DECISION

I

Appellant argues that the district court revoked his probation without making the required findings. Generally, the district court has broad discretion when determining whether there is sufficient evidence to revoke probation and will not be reversed absent an 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).

Before revoking probation, 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 the need for confinement outweighs the policies favoring probation.” *Id.* at 606 (quoting *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980)). The third factor is satisfied if “(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.” *Austin*, 295 N.W.2d at 251 (quotation omitted).

Before *Modtland*, this court interpreted *Austin* to permit a “sufficient-evidence exception” to the requirement that the district court make findings on the required factors. *See, e.g., State v. Theel*, 532 N.W.2d 265, 267 (Minn. App. 1995), *review denied* (Minn. July 20, 1995); *see also Austin*, 295 N.W.2d at 250 (affirming probation revocation

despite district court's failure to make a finding regarding the condition of probation violated). But *Modtland* abrogated the sufficient-evidence exception, and the district court is now required to make specific findings on the *Austin* factors to ensure the creation of a "thorough, fact-specific record[] setting forth th[e] reasons for revoking probation." *Modtland*, 695 N.W.2d at 606, 608.

District courts "should not assume they have satisfied *Austin* by reciting the three factors and offering general, non-specific reasons for revocation, as 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. To ensure a thorough, fact-specific record setting forth the reasons for revoking probation, a district court should explain its "substantive reasons for revocation and the evidence relied upon" in reaching that determination. *Id.* This court, therefore, will reverse a district court's revocation of probation in the absence of the requisite findings, even if revocation is supported by sufficient evidence. *See id.* at 606 (abolishing the sufficient-evidence exception to the requirement that district courts make *Austin* findings).

Respondent concedes that the district court did not make clear and specific findings under *Austin* and *Modtland*. But respondent argues that the district court's reasons for revoking appellant's probation are reflected in the transcript and are sufficient to satisfy the requirements of *Austin* and *Modtland*. We agree. Appellant admitted to using marijuana and methamphetamines, and on the basis of appellant's admission, the district court found that appellant violated the terms of his probation. This finding clearly designates the specific probation condition that appellant violated, and because appellant

admitted to the violation, implicit in the district court's findings is a finding that appellant's violation was intentional.

Further, in revoking appellant's probation, the district court summarized the history of appellant's probation violations and noted that appellant "has a significant chemical dependency issue that is a component of his problems." After summarizing appellant's previous probation violations, the district court stated, "Given all of that circumstance I cannot in good conscience give you another chance here . . . you have had three chances, actually four including the chance that [the prosecutor] gave you at the first day which was a stay of imposition of sentence in this case."

While the district court did not explicitly determine whether the need for confinement in this case outweighs the policies favoring probation, its discussion about appellant's chemical dependency and history of probation violations address whether confinement is necessary to protect the public from further criminal activity by appellant and whether appellant is in need of correctional treatment which can most effectively be provided if he is confined. Further, the district court's discussion regarding the several "chances" that appellant has had addresses whether it would unduly depreciate the seriousness of appellant's violation if his probation were not revoked.

Therefore, we conclude that the district court made the findings necessary to revoke appellant's probation. The better practice here would have been to make specific findings under *Austin* and *Modtland*, and we continue to encourage district courts to develop a fact-specific record setting forth the reasons for revoking probation. But on this record, the district court's discussion about appellant's chemical dependency and

history of probation violations is sufficient to explain the substantive reasons for revocation and the evidence the district court relied upon.

II

Appellant also claims that the district court revoked his probation on the basis of unproven allegations and innuendo. To support his claim, appellant directs this court to comments made by the district court regarding the individuals that appellant was with when he was detained for his third probation violation. The district court specifically noted that the individuals were in possession of several firearms, which greatly concerned the district court. While we acknowledge the questionable relevance and propriety of the district court's comments, the record clearly reflects that the district court revoked appellant's probation because appellant admitted to violating the terms of his probation.

Affirmed.