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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1993**

State of Minnesota,
Respondent,

vs.

Jacob John Skinner,
Appellant.

**Filed July 8, 2013
Affirmed
Johnson, Chief Judge**

Washington County District Court
File No. 82-CR-11-577

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

Pete Orput, Washington County Attorney, Thomas D. Wedes, Assistant County Attorney,
Stillwater, Minnesota (for respondent)

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

Considered and decided by Cleary, Presiding Judge; Johnson, Chief Judge; and
Hooten, Judge.

UNPUBLISHED OPINION

JOHNSON, Chief Judge

Jacob John Skinner challenges the revocation of his probation on the grounds that the district court did not make adequate findings related to the third *Austin-Modtland* factor and that the record does not support the district court's findings. We affirm.

FACTS

In March 2012, a Washington County jury found Skinner guilty of second-degree assault with a dangerous weapon, in violation of Minn. Stat. § 609.222, subd. 1 (2010). The conviction arose from a fight at an apartment complex in the city of Oak Park Heights in February 2011. The state introduced evidence that Skinner stabbed another man with a knife, causing a laceration to the man's left forearm and several puncture wounds to the man's chest and left side.

After the jury's verdict, the district court imposed a sentence of 27 months of imprisonment but stayed the sentence for seven years and placed Skinner on probation. The sentence was a downward dispositional departure from the presumptive guidelines sentence of a 27-month commitment. The district court ordered Skinner to serve 180 days in jail and imposed certain conditions of probation, including a prohibition on the use of alcohol or controlled substances, a requirement that Skinner submit to random drug testing, and a requirement that Skinner complete chemical-dependency evaluation and treatment.

In July 2012, the district court issued a warrant for Skinner's arrest based on a report that he had violated the conditions of his probation. After his arrest, Skinner

admitted that he violated the conditions of his probation by using methamphetamine, by failing to submit to random drug testing, and by failing to complete an in-patient chemical-dependency treatment program. A district court judge found that Skinner intentionally violated the conditions of his probation but deferred to the sentencing judge for a decision on whether to revoke probation. Two days later, the sentencing judge conducted a probation-revocation hearing. A probation officer recommended that Skinner remain on probation, but the sentencing judge revoked Skinner's probation and executed his sentence. Skinner appeals.

DECISION

Skinner argues that the district court erred by revoking his probation. He contends that the district court failed to make findings related to the third *Austin-Modtland* factor that the record does not support the district court's findings and conclusion.

The supreme court has prescribed a three-step analysis for deciding whether to revoke probation. A district court may revoke probation only if the court (1) designates the specific condition of probation that has been violated, (2) finds that the violation was intentional or inexcusable, and (3) finds that the need for confinement outweighs the policies favoring probation. *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980); *see also State v. Modtland*, 695 N.W.2d 602, 606 (Minn. 2005). A district court may find that the third *Austin* factor is satisfied if it finds that any of three sub-factors are present: (1) confinement is needed to “protect the public from further criminal activity by the offender,” (2) confinement is necessary to provide treatment, or (3) a further stay of the sentence “would unduly depreciate the seriousness of the violation.” *Austin*, 295

N.W.2d at 251 (quoting A.B.A. Standards for Criminal Justice, Probation § 5.1(a) (Approved Draft 1970)). This court applies an abuse-of-discretion standard of review to a district court's decision to revoke probation. *Id.* at 249-50.

The supreme court has elaborated on the detail that is required when a district court revokes probation. A district court must make specific findings in writing or orally on the record. *Modtland*, 695 N.W.2d at 608 & n.4. “The requirement that courts make findings under the *Austin* factors assures that district court judges will create thorough, fact-specific records setting forth their reasons for revoking probation.” *Id.* at 608. The supreme court has emphasized that district courts “must seek to convey their substantive reasons for revocation and the evidence relied upon.” *Id.* “Thus, courts should not assume that 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.*

Skinner's argument focuses on the third *Austin* factor. The district court found that the third *Austin* factor was satisfied by relying on the second and third sub-factors. The district court found that Skinner is “not amenable to probation under our current system.” This finding is relevant to the second sub-factor because it indicates that confinement is necessary to provide treatment. The district court also expressed concern that Skinner had not heeded the warnings given to him at the time of sentencing. This finding is relevant to the third sub-factor because it indicates that the district court believed that continuing probation would unduly depreciate the seriousness of the

violation. Thus, the district court's findings, although somewhat abbreviated, are sufficient.

Furthermore, the district court's findings are supported by the record of the probation-revocation hearing. Skinner twice had absconded from a chemical-dependency treatment program. After the first time, Skinner's probation officer found him in a public place and persuaded him to return to treatment, but Skinner left again. Skinner continued to use methamphetamine and failed to submit to random drug testing. In short, Skinner was not fulfilling the purpose of his probation, which was an opportunity afforded to him only because the district court departed from the presumptive guidelines sentence. Thus, the record supports the district court's finding that the need for confinement outweighs the policies favoring probation because Skinner's confinement is necessary to provide him with treatment and because a continuation of probation would unduly depreciate the seriousness of Skinner's probation violation.

In sum, the district court did not err by revoking Skinner's probation.

Affirmed.