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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2196**

State of Minnesota,
Respondent,

vs.

Reynaldo Valentino Norris,
Appellant.

**Filed August 5, 2013
Affirmed
Smith, Judge**

Beltrami County District Court
File No. 04-K0-02-001588

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

Timothy R. Favor, Beltrami County Attorney, Bemidji, Minnesota (for respondent)

David Merchant, Chief Appellate Public Defender, Cathryn Middlebrook, Assistant State
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Chutich, Presiding Judge; Peterson, Judge; and Smith,
Judge.

UNPUBLISHED OPINION

SMITH, Judge

We affirm the district court's decision to revoke appellant's probation and execute
the sentence on his fifth-degree controlled-substance conviction. Appellant contends that

the district court abused its discretion because the evidence failed to establish that the need for confinement outweighed the policies favoring probation.

FACTS

In September 2002, appellant Reynaldo Norris pleaded guilty to a fifth-degree controlled-substance crime for attempting to obtain prescription drugs with a forged prescription. While on home monitoring and awaiting sentencing, Norris absconded.

In January 2006, Norris appeared for sentencing. The district court sentenced Norris to a 17 month stayed commitment to the Department of Corrections, and placed Norris on probation. The district court imposed the following probationary conditions, requiring that Norris (1) pay a \$1000 fine; (2) pay a \$43 law library fee; (3) immediately obtain a chemical dependency evaluation; (4) comply with aftercare instructions; (5) not use alcohol, not use controlled substances, and not enter any establishments which sell the same; (6) submit to random searches of his person and property; (7) pay restitution for the home-monitoring bracelet he damaged in order to abscond; and (8) serve 100 days in jail.

On June 23, 2006, Norris's probation officer filed a violation report, alleging that Norris failed to obtain a chemical-dependency evaluation and was not following probation instructions. Norris obtained the evaluation before appearing for the violation hearing. At the hearing, Norris admitted his failure to communicate with probation and to pay the required fines. The district court ordered Norris to serve three days in jail. The district court also reinstated probation, largely due to Norris's assurances that he would correct his behavior.

In January 2009, Norris's probation officer filed a second violation report, alleging that Norris failed to abstain from using mood-altering substances and to pay his required fines. Norris admitted the violations and the district court required that he enter inpatient treatment and that he satisfy his fines. The district court reinstated probation.

In August 2012, a third violation report alleged that Norris failed to follow aftercare instructions and to maintain contact with his probation officer. At the hearing, Norris admitted his failure to maintain contact with his probation officer for a three-and-one-half-year period. The district court continued the violation hearing to obtain an updated dispositional recommendation. Despite initially requesting execution of Norris's sentence, his probation officer's updated report recommended that Norris complete a "diagnostic assessment" to treat his depression, obtain another chemical-dependency assessment, and remain on probation subject to a 90-day review hearing.

At the September 10, 2012 probation revocation hearing, Norris requested that the district court follow his probation officer's recommendation. Norris argued that he had not committed a criminal offense since 2003 and that his failure to remain in contact with his probation officer stemmed from his struggles with mental illness and family obligations. The state requested that Norris's sentence be executed, noting that "[t]his is Mr. Norris's third violation. He was AWOL for three years . . . he has flaunted probation." The district court remarked that, "since 2002, essentially, we haven't had any contact with [Norris] for seven of those years, because he simply hasn't responded. I can't find that he is amendable to probation, given that history." Based on Norris's flight history, the district court determined that "Mr. Norris shows that he has no intention of

following probation requirements and [he] has made a mockery, essentially, of probation . . . that is inexcusable.” The district court revoked Norris’s probation and executed his sentence, concluding that Norris’s interest in freedom and the policies favoring probation were outweighed by the state’s need to “insur[e] rehabilitation and . . . public safety.” This appeal followed.

DECISION

Before revoking probation, a district court must apply the three-factor analysis set forth in *State v. Austin*. 295 N.W.2d 246, 250 (Minn. 1980); *see also State v. Modtland*, 695 N.W.2d 602, 606 (Minn. 2005). The district court must (1) designate the specific condition or conditions 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. Whether a district court has made the required findings is a question of law, which we review de novo. *Modtland*, 695 N.W.2d at 605. A district court has broad discretion to determine whether sufficient evidence exists to revoke probation, and reversal is appropriate only if there has been a clear abuse of discretion. *Austin*, 295 N.W.2d at 249-50. Norris challenges only the third *Austin* factor.

Revocation is a last resort utilized when treatment has failed, and “policy considerations may require that probation not be revoked even though the facts may allow it.” *Id.* at 250. When applying an *Austin* analysis, a district court cannot simply state general reasons for revocation. *Modtland*, 695 N.W.2d at 608. Rather, it must convey substantive reasons for revocation based on the evidence, sufficient to create a fact-specific record. *Id.* Revocation cannot be “a reflexive reaction” to technical

violations but must be reserved for when an offender's behavior demonstrates that he or she cannot be counted on to avoid antisocial activity.¹ *Austin*, 295 N.W.2d at 251.

Norris argues that in revoking his probation the district court failed to properly weigh the need for confinement against the policy preference for probation. In *Austin*, the supreme court referenced three elements to be considered when determining whether confinement is warranted:

- (i) [C]onfinement 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. Consideration of these elements promotes the district court's exercise of "sound judgment" and ensures that "both the probationer's and the public's needs are served."

Id. The third *Austin* requirement is satisfied if any of the three elements applies. *Id.*

Norris's contention that the policies favoring probation outweigh the need for his confinement is unavailing. The district court specifically determined that failure to revoke his probation would depreciate the seriousness of his violations. The district court found that Norris had failed to maintain contact with probation for seven of the ten years that he was on probation. The district court determined that Norris's actions were "inexcusable" and that Norris had "made a mockery . . . of probation." We do not disagree with this assessment. Norris had a habit of absconding and, despite previous

¹ Written findings are not required. *Modtland*, 695 N.W.2d at 608 n. 4. A district court may state its findings on the record so long as the transcript is sufficient to permit review. *Id.*

assurances to remain in contact with probation and satisfy the conditions of his probation, continued to neglect his obligations. The district court's findings reflect sound judgment, and the revocation of Norris's probation was not a reflexive response to technical violations. Norris received multiple opportunities to comply with his obligations. We conclude that the district court properly determined that the need for Norris's confinement outweighed the policies favoring probation.

Affirmed.