

STATE OF MINNESOTA
IN COURT OF APPEALS

A24-0512



State of Minnesota,

Respondent,

vs.

Jesus Salvador Zepeda Carbajal,

Appellant.

ORDER OPINION

Rice County District Court
File No. 66-CR-18-372

Considered and decided by Frisch, Presiding Judge; Connolly, Judge; and Cochran, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. On April 4, 2019, appellant Jesus Salvador Zepeda Carbajal pleaded guilty to felony domestic assault in violation of Minn. Stat. § 609.2242, subd. 4 (2016). On June 4, the district court stayed imposition of sentence and placed Zepeda Carbajal on probation for five years. The district court imposed probationary conditions requiring Zepeda Carbajal to, among other things, remain law-abiding, refrain from using or possessing alcohol and controlled substances, contact his probation officer as directed, complete cognitive-skills training, complete chemical-dependency programming, and complete domestic-abuse counseling.

2. On February 27, 2020, the district court received a probation-violation report containing allegations that Zepeda Carbajal failed to contact his probation officer,

participate in case planning, complete chemical-dependency treatment, refrain from using alcohol or controlled substances, and complete domestic-violence programming. Zepeda Carbajal admitted to each alleged violation except the failure to complete domestic-violence programming, which he had since completed. The district court ordered as an intermediate sanction that Zepeda Carbajal serve 45 days in jail and complete 30 days of electronic home monitoring, leaving the stay of imposition in place and continuing all previous probationary conditions.

3. On March 1, 2023, the district court received another probation-violation report, this time setting forth allegations that Zepeda Carbajal failed to remain law-abiding, maintain contact with probation as directed, and submit to chemical testing. A September 19 addendum to the probation-violation report set forth additional alleged violations. Zepeda Carbajal denied the allegations at a hearing on December 27, 2023. On January 12, 2024, the district court received another probation-violation report, setting forth allegations that Zepeda Carbajal failed to remain law-abiding and failed to maintain contact with probation. Zepeda Carbajal denied the new allegations.

4. On January 17, 2024, the district court held a contested revocation hearing to address two of the alleged violations: (1) failure to remain law-abiding for a new first-degree driving-while-impaired (DWI) charge and three related gross-misdemeanor charges, and (2) failure to maintain contact with probation for missing an appointment on January 3, 2024.

5. At the contested hearing, a probation officer testified that she had supervised Zepeda Carbajal since June 2023 and had submitted multiple probation-violation reports

for him, including the January 12, 2024 report. The probation officer further testified that, after the December 27, 2023 hearing, she gave Zepeda Carbajal an appointment card reflecting a scheduled meeting on January 3, 2024. Zepeda Carbajal “no-called, no-showed that appointment.” The probation officer also testified that Zepeda Carbajal had not submitted to drug testing because he failed to attend his probation appointments.

6. A sheriff’s deputy also testified about the felony DWI charge and related charges. The deputy testified that on January 12, 2024, he responded to a call for assistance and discovered a vehicle partially blocking the roadway on a highway. The deputy observed Zepeda Carbajal asleep in the driver’s seat of the vehicle, which was running and in gear. After waking Zepeda Carbajal and instructing him to place the vehicle in “park,” the deputy observed that Zepeda Carbajal “was sweating profusely,” “had bloodshot, watery eyes,” and that an open bottle of beer was on the passenger floorboard. Zepeda Carbajal refused to get out of the car and the deputy eventually physically removed him from the vehicle before placing him under arrest. Zepeda Carbajal refused both a blood and urine test.

7. The district court found that clear and convincing evidence established that Zepeda Carbajal failed to remain in contact with probation and had failed to remain law-abiding, noting that both violations were “willful and unlawful.”

8. The district court also found “a pattern of lack of compliance that tends to show that [Zepeda Carbajal] is not amenable to probation and not willing to comply with the conditions of probation.” The district court “found that the violations were intentional and inexcusable.” Upon consideration of “multiple violations,” including the February

2020 and January 2024 violations, the district court found that Zepeda Carbajal “does pose a risk to the community and the policies favoring probation outweigh the need for confinement.” The district court supplemented its finding, stating that “[t]he policies favoring probation are outweighed in this case.” The district court revoked Zepeda Carbajal’s probation and imposed an executed prison sentence of 18 months. Zepeda Carbajal appeals, arguing that the district court abused its discretion in revoking his probation by making insufficient findings and by concluding that the need for confinement outweighed the policies favoring probation.

9. A 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. Fortner*, 989 N.W.2d 368, 374 (Minn. App. 2023) (quotation omitted). But whether the district court has made the required findings under *Austin* to revoke probation “presents a question of law, which is subject to de novo review.” *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005). We conclude that the district court erred in failing to make findings to support its revocation decision.

10. Before revoking a defendant’s 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 need for confinement outweighs the policies favoring probation.” *Austin*, 295 N.W.2d at 250. These findings are known as the *Austin* factors. *See, e.g., Modtland*, 695 N.W.2d at 603.

11. Zepeda Carbajal argues that the district court made insufficient findings regarding the third *Austin* factor. In determining whether the third *Austin* factor is met, district courts consider whether (1) “confinement is necessary to protect the public from further criminal activity by the offender,” (2) “the offender is in need of correctional treatment which can most effectively be provided if he is confined,” or (3) “it would unduly depreciate the seriousness of the violation if probation were not revoked.” *Modtland*, 695 N.W.2d at 607 (quotation omitted). These considerations are known as the *Modtland* subfactors. *State v. Smith*, 994 N.W.2d 317, 320 (Minn. App. 2023), *rev. denied* (Minn. Sept. 27, 2023). “Only one *Modtland* subfactor is necessary to support revocation.” *Id.*

12. District courts “should not assume that they have satisfied *Austin* by reciting the three factors and offering general, non-specific reasons for revocation.” *Modtland*, 695 N.W.2d at 608. Rather, district courts must “create thorough, fact-specific records” and “convey their substantive reasons for revocation and the evidence relied upon.” *Id.* This process ensures that district courts “balance the probationer’s interest in freedom and the state’s interest in insuring his rehabilitation and the public safety.” *Id.* at 606-07 (quotation omitted).

13. Our review of the record shows that the district court did not engage in the interest-balancing required under the third *Austin* factor. Although the district court invoked the third *Austin* factor when it stated that the “policies favoring probation are outweighed in this case,” it did not conduct substantive analysis rooted in the *Modtland* subfactors to support that conclusion.

14. Regarding the first *Modtland* subfactor, the district court found that Zepeda Carbajal “does pose a risk to the community” based on his “multiple violations, including the prior violations that were found in February of 2020 as well as the multiple violations proved today.” But the district court did not address why those violations suggested he was a “risk to the community,” or whether “confinement [was] necessary to protect the public from further criminal activity.” *See id.* at 607 (quotation omitted). We cannot speculate on appeal as to the substantive reasons for revocation. *Id.* at 608 (“[I]t is not the role of appellate courts to scour the record to determine if sufficient evidence exists to support the district court’s revocation.”).

15. The district court also failed to make sufficient findings on the second *Modtland* subfactor. The district court found “a pattern of lack of compliance that tends to show that Zepeda Carbajal is not amenable to probation and not willing to comply with the conditions of probation.” While this statement may suggest that probation did not result in effective “correctional treatment” for Zepeda Carbajal, it does not address whether that treatment “can most effectively be provided” in confinement. *See id.* at 607 (quotation omitted). And the district court did not analyze how the pattern of noncompliance related to the need for confinement or attempt to balance the need for confinement against the policies favoring probation. *See id.*

16. As to the third subfactor, the district court did not make any findings about whether “it would unduly depreciate the seriousness of the violation if probation were not revoked.” *Id.* (quotation omitted).


17. In sum, the district court abused its discretion by offering only “general, non-specific reasons for revocation” instead of articulating “substantive reasons for revocation and the evidence relied upon,” as required by *Modtland. Id.* at 607-08.

IT IS HEREBY ORDERED:

1. The district court’s order is reversed and this matter is remanded for further proceedings.
2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: 10/21/24

BY THE COURT



Judge Jennifer L. Frisch