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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1513**

State of Minnesota,
Respondent,

vs.

Travis Lee Beyer,
Appellant.

**Filed April 24, 2017
Affirmed
Rodenberg, Judge**

Kandiyohi County District Court
File No. 34-CR-12-351

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

Shane D. Baker, Kandiyohi County Attorney, Stephen J. Wentzell, First Assistant County Attorney, Willmar, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Ross, Judge; and
Kalitowski, Judge.*

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

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant Travis Lee Beyer challenges the district court's order revoking a stay of adjudication and imposing an executed sentence for third-degree criminal sexual conduct. We affirm.

FACTS

In 2012, appellant was charged with third-degree criminal sexual conduct and contributing to the delinquency of a child, stemming from a sexual relationship with a 14-year-old girl. Appellant pleaded guilty to both counts as part of a plea agreement calling for a stay of adjudication on the charge of third-degree criminal sexual conduct. The district court placed appellant on probation for five years on conditions, including that appellant present himself for a psycho-sexual evaluation and comply with all recommendations; have no unsupervised contact with female minors without approval from his probation officer; not own or operate any device with internet capabilities without approval from his probation officer; and abstain from using, possessing, or consuming alcohol or other mood-altering substances not prescribed to him by a physician. Appellant was sentenced to serve 365 days in jail, with 350 days stayed, on the contributing-to-the-delinquency charge.

Between 2013 and 2016, appellant violated his probation four times. On July 24, 2014, appellant admitted he had violated his probation by failing to arrange a polygraph test and failing to attend a sex-offender treatment program as directed. At a review hearing on November 26, 2014, appellant admitted that he had violated his probation by using

alcohol and marijuana, and his probation officer reported that appellant had been found to have been deceptive in two polygraph tests. On August 13, 2015, appellant admitted in court that he had violated his probation by being discharged from his treatment program after failing polygraph tests and by operating a device to access the internet to view pornography without approval from his probation officer. On May 12, 2016, appellant admitted in court that he had violated his probation by having contact with a 17-year-old girl and by being terminated from his treatment program. Appellant provided the district court with a diagnostic assessment from his doctor, which recommended appellant should continue to work with the doctor and complete individual sex-offender treatment. Nonetheless, the district court found that appellant was in violation of his probation, the violation was intentional, further efforts of rehabilitation were not warranted, and confinement was necessary to protect the public. After making these findings, the district court revoked appellant's probation and imposed an executed prison sentence for third-degree criminal sexual contact.

This appeal followed.

D E C I S I O N

Appellant argues that the district court abused its discretion because it could have provided him one additional opportunity to seek treatment.

We review a district court's revocation of probation for abuse of discretion. *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). A district court may revoke probation upon making three findings: (1) the defendant violated a specific condition of probation;

(2) the violation was intentional or inexcusable; and (3) the need for confinement outweighs policy considerations favoring probation. *Id.* at 250.

Appellant only challenges the district court's finding on the third *Austin* factor. That factor is satisfied if the court finds that (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." *Id.* at 251. Here, the district court made the first and third of those findings. The district court's findings are supported by the record. While appellant disagrees with how the district court weighed the policy considerations, he has not identified any abuse of discretion, especially given appellant's history of violating his probation.

Appellant argues that the district court had before it evidence that reinstatement to probation would be "a viable treatment option." On this record, the district court might have reinstated appellant to probation, but the mere existence of a probationary alternative does not indicate abuse of the district court's discretion in revoking probation.

The district court applied the proper legal standard in revoking appellant's probation, and we see no abuse of the district court's discretion.

Affirmed.