

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1880**

State of Minnesota,
Respondent,

vs.

Matthew Allyn Defries,
Appellant.

**Filed July 2, 2018
Affirmed
Ross, Judge**

Wilkin County District Court
File No. 84-CR-15-302

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Carl Thunem, Wilkin County Attorney, Breckenridge, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Ross, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

ROSS, Judge

A Breckenridge police officer watched Matthew Defries rush two strangers and punch one of them. Defries threatened to kill one of the intervening police officers. The state charged Defries with, and Defries pleaded guilty to, one count of terroristic threats

and two counts of misdemeanor assault. The district court stayed a 30-month prison sentence on probationary conditions. Defries violated the conditions, and the district court revoked probation and executed the prison sentence. Defries appeals, arguing that the district court improperly concluded that the need for confinement outweighed the policies favoring continued probation. The argument is unpersuasive, and we affirm.

FACTS

Officer Kris Karlgaard restrained Matthew Defries after he watched him run up to J.K. and C.C. and begin punching one of them. J.K. and C.C. explained that they did not know Defries and that he abruptly began yelling at them, striking one of them in the face and back of the head, and pushing the other. When Officer Patrick Kirsch spoke with Defries, Defries told him, “You’re f---ing dead b---h.” The officers arrested Defries. On the way to jail, Defries repeated, “That officer is dead.” The state charged Defries with one count of terroristic threats and two counts of misdemeanor assault.

Defries pleaded guilty to all three charges. Defries told the district court that he had been “belligerently drunk” and regretted his actions. The district court imposed but stayed a 30-month prison sentence on the following probationary conditions: remain law abiding; complete a mental-health and chemical-dependency evaluation and follow all recommendations; maintain contact with, and follow all instructions of, the probation office; and refrain from alcohol and unprescribed drug use. A bit over a year later, Defries’s probation officer reported that Defries violated these conditions. He had failed to attend a relapse-prevention program as recommended by his chemical-dependency evaluation,

failed to maintain contact with the probation office, had used marijuana, and had not completed a mental-health evaluation.

The same district court judge who sentenced Defries presided at his probation-revocation hearing. Defries admitted to the violations. But he said that he believed he could be readmitted to the relapse-prevention program and claimed that he missed seven probation-office appointments without notice or rescheduling because he was sick or at work. He said that he had been thrice shot with a shotgun, causing him chronic pain that he alleviated with marijuana. The district court found that Defries's violations were intentional and inexcusable and that the need for his confinement outweighed the policies favoring continued probation. The court executed Defries's 30-month prison sentence, and Defries appeals.

D E C I S I O N

Defries argues that the district court improperly revoked his probation and executed his prison sentence. We will reverse only if the district court abused its broad discretion. *State v. Austin*, 295 N.W.2d 246, 249–50 (Minn. 1980). A district court abuses its discretion when it rests its judgment on clearly erroneous facts, *id.*, or fails to explain its “substantive reasons for revocation and the evidence relied upon,” *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005). A district court must make three record-supported findings before revoking probation. It must find that the defendant violated a specific probation condition, that the violation was intentional, and that the need for confinement outweighs policies favoring continued probation. *Modtland*, 695 N.W.2d at 606. Whether a district court has made adequate findings is a question of law that we review de novo. *Id.* at 605.

Defries contends that the district court improperly concluded that the need for confinement outweighs the policies favoring continued probation. District courts “must bear in mind that ‘policy considerations may require probation not be revoked even though the facts may allow it’ and that ‘[t]he purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed.’” *Modtland*, 695 N.W.2d at 606 (quoting *Austin*, 295 N.W.2d at 250). In making this determination, district courts consider whether:

- (i) confinement is necessary to protect the public from further 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 (quoting A.B.A. Standards for Criminal Justice, Probation § 5.1(a) (Approved Draft 1970)). The district court found that the need for Defries’s confinement outweighed the policies favoring continued probation because Defries was a threat to public safety, treatment could be most effectively provided if Defries were confined, and continuing probation would unduly depreciate the seriousness of Defries’s violations.

The district court’s findings are sufficiently supported and its rationale is sound. The record does not contradict the district court’s observation that Defries has “clearly . . . not put the effort into probation that needs to be put into probation.” The district court reasoned that Defries remains a threat to public safety based on his violent attack on two strangers

and threats to police combined with his “failure to take the necessary care and treatment to limit that type of behavior.” The district court observed that his chronic absenteeism and termination from the relapse-prevention program, his failure to maintain contact with his probation officer, and his drug use all reflected a cavalier attitude toward the rehabilitative opportunity he was afforded by probation. The district court had already determined that these conditions of probation were necessary to prevent Defries from engaging in the same kind of violent behavior. The district court reasonably considered that allowing Defries to continue on probation would undermine the seriousness of his violations. It also reasonably concluded that treatment could most effectively be provided if Defries were confined under direct supervision. We hold that the district court did not abuse its discretion by finding that the need for confinement outweighed the policies favoring continued probation.

Defries complains that the district court improperly referenced the downward dispositional departure it afforded Defries at sentencing, arguing that it is not a relevant factor when considering the need for confinement. But whether to revoke a defendant’s probation is a fact-specific inquiry left to the discretion of the district court, and, in exercising that discretion, a district court may consider its previous grant of a downward dispositional departure. *See State v. Fleming*, 869 N.W.2d 319, 331 (Minn. App. 2015) (“Fleming complains that the district court considered its grant of a downward dispositional departure when deciding whether to revoke probation. That was a proper consideration.”), *aff’d* 883 N.W.2d 790 (Minn. 2016). We see nothing in the district court’s probation-revocation consideration that suggests any abuse of discretion.

Affirmed.