This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0099

State of Minnesota,
Respondent,

vs.

Andre Thomas Buie,
Appellant.

Filed September 12, 2022
Affirmed
Ross, Judge

Steele County District Court
File No. 74-CR-15-1012, 74-CR-15-1606

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Daniel A. McIntosh, Steele County Attorney, Julia A. Forbes, Assistant County Attorney, Owatonna, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Christopher L. Mishek, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Frisch, Judge; and Florey, Judge.*

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

NONPRECEDENTIAL OPINION

ROSS, Judge

Andre Buie was convicted of and on probation for stalking and violating a domestic-abuse no-contact order when he engaged in a series of crimes, including child neglect, drunk driving, and swindling. On appeal from the order revoking his probation, Buie argues that the district court improperly relied on his unemployment and that the record does not support the finding that the need for his confinement outweighs the policies favoring probation. Because the district court did not rely on Buie's unemployment as a ground for revoking his probation, and because the record supports the district court's factual findings, we affirm.

FACTS

Andre Buie pleaded guilty in August 2015 to stalking and violating a domestic-abuse no-contact order. The district court granted Buie's motion for a downward dispositional departure, staying his 39- and 24-month prison sentences on probationary conditions. The conditions included, among other things, completing chemical-dependency treatment at Minnesota Adult and Teen Challenge, remaining law abiding, and abstaining from alcohol. Buie violated his probation in March 2016 by being discharged from treatment for violating program rules. The district court reinstated probation.

The district court learned in November 2020 that Buie again violated his probation. His probation officer reported that he was convicted of stalking in 2019, and that in 2020 the state had charged him with driving while impaired, second- and fourth-degree criminal sexual conduct, and felony theft by swindle. This conduct led to drunk-driving, child-

neglect, and swindling convictions. Buie admitted to violating his probation, and the district court found his violations were intentional and inexcusable. The district court revoked Buie's probation and executed his sentences. It reasoned that, because Buie had yet to complete chemical-dependency treatment, was a high risk to reoffend, and had recently been convicted of new criminal offenses, "execution of these sentences is a part of what is required for community safety." The district court commented favorably on Buie's community-service work, finding it commendable but not a substitute for employment and "not enough for the Court to find that public safety can be preserved and that the seriousness of these violations are overcome."

Buie appeals.

DECISION

Buie asks us to reverse the district court's order revoking his probation. We review a district court's probation-revocation decision for an abuse of discretion. *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019). Buie argues that the district court abused its discretion in two ways—by improperly revoking probation because of his unemployment and by finding that the need for his confinement outweighs the policies favoring probation. The arguments fail.

We are not persuaded by Buie's contention that the district court improperly relied on his unemployment. It is true that the district court may not use "employment factors, including: . . . employment at time of sentencing," when determining whether to depart from a presumptive sentence designated by the sentencing guidelines. Minn. Sent. Guidelines 2.D.2.c(4) (2014). Buie fails to cite any authority for the premise that the

restriction on departing dispositionally at sentencing applies to a decision whether to revoke probation, but we do not base our decision on that omission.

We need not explore whether Buie's premise is valid because the record does not support his contention that the district court relied on his unemployment when it decided to revoke probation. The district court made the following findings at Buie's resentencing hearing:

> I do want to point out that the Court's decision is not a judgment on the person but rather applying the law to the behavior. And so in each of those cases, Mr. Buie should have been sentenced to prison originally. He was given a downward departure in each of these cases. He's appearing now for resentencing, still in need of chemical dependency treatment, and having committed new offenses against the community. The execution of these sentences is a part of what is required for community safety when we have someone still in need of treatment, who is still a high risk assessment.
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> He's not employed in the community. We know that that's closely tied to the ability for people to be successful. And so while I applaud the work that he's been doing with the food programming in exchange for the food he and his wife are receiving, that is simply not enough for the Court to find that public safety can be preserved and that the seriousness of these violations are overcome by the community work service that he's doing. The record is simply insufficient for the Court to do anything other than execute these two sentences.

The first paragraph reflects the district court's apparent primary analysis, culminating in its conclusion that community safety requires Buie's confinement. It expressly based that conclusion on Buie's failure to complete chemical-dependency treatment, his recently committing new crimes, and his being a high risk to reoffend. Having already determined that confinement was "required," the district court went on to discuss Buie's employment

status as it bore on whether he would succeed on probation. The district court may consider employment status when analyzing whether a defendant will succeed on probation. *See State v. Soto*, 855 N.W.2d 303, 312 (Minn. 2014) (holding that district courts may consider "social or economic factor[s]" at sentencing if they are "relevant to determining whether a defendant is particularly amenable to probation" (quotation omitted)). The district court's discussion does not indicate that it based its revocation decision on Buie's unemployment.

We also are not persuaded by Buie's contention that the district court abused its discretion by finding that the need for his confinement outweighs the policies favoring probation. The finding is one of the prerequisites to revoking probation. *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). And the finding is supported here by the district court's evidence-based reasoning that the risk he posed to the community "required" Buie's confinement. It may be true, as Buie maintains, that the district court could have imposed intermediate sanctions, but the supreme court has held that imposing intermediate sanctions is a matter of discretion. *State v. Modtland*, 695 N.W.2d 602, 607 n.3 (Minn. 2005) ("[T]he Court *may*, in light of the nature of the probation violation, alter the terms of the defendant's probation—including imposition of intermediate sanctions . . . ." (emphasis added)). Buie does not establish that the circumstances here so compellingly support continued probation that the district court lacked the discretion to choose revocation over intermediate sanctions.

Affirmed.