

*This opinion is nonprecedential except as provided by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
A24-0889**

State of Minnesota,
Respondent,

vs.

Nickolas John May,
Appellant.

**Filed January 27, 2025
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CR-20-14734

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

Mary F. Moriarty, Hennepin County Attorney, Elizabeth Scoggin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Lauermann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Reyes, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues that the district court abused its discretion by revoking his probation when it found that the need for confinement outweighed the policies favoring probation. We affirm.

FACTS

Respondent State of Minnesota charged appellant Nickolas John May with fourth-degree criminal sexual conduct involving a physically helpless victim, in violation of Minn. Stat. § 609.345, subd. 1(d) (2018), after police received a report that appellant had performed oral sex on his sleeping roommate at a drug-treatment facility. Appellant pleaded guilty as charged. The district court sentenced appellant to 24 months in prison and ten years of conditional release, stayed execution of the sentence, and placed appellant on probation for three years. Relevant probation conditions included: no use of alcohol, non-prescribed mood-altering drugs, or illegal drugs; submit to testing as directed; if in receipt of a positive test result, complete a chemical-health assessment and follow recommendations from probation agent; and complete a sex-offender-treatment program.

First Probation Violation

In June 2022, probation filed a violation report, alleging that appellant had violated probation by (1) failing to abstain from using controlled substances and (2) failing to enter and complete sex-offender treatment. The report cited several drug tests that revealed the presence of amphetamine in appellant's system and his lack of engagement in treatment services. Appellant admitted to the violations at a probation-revocation hearing. The district court allowed appellant to remain on probation but ordered him to complete a chemical-dependency program while in custody at the Hennepin County Workhouse. After completing the chemical-dependency program, appellant would be furloughed to a residential sex-offender-treatment program.

Second Probation Violation

In April 2023, probation filed a second violation report, alleging that appellant had violated probation by (1) failing to abstain from using controlled substances; (2) failing to enter and complete sex-offender treatment; and (3) failing to follow recommendations of treatment. The report contended that appellant relapsed on methamphetamine and was discharged from outpatient treatment because he failed to report to treatment. At a contested probation-revocation hearing, the district court found that appellant violated probation, extended appellant's probation by two years, and ordered appellant to complete residential chemical-dependency treatment.

Third Probation Violation and Revocation

In October 2023, probation filed a third violation report, alleging that appellant had violated probation by absconding from the residential chemical-dependency treatment facility. Appellant admitted to the violation at a probation-revocation hearing.¹ The district court revoked probation and executed the sentence of 24 months in prison and ten years of conditional release. This appeal follows.

¹ Appellant had a pending case involving a misdemeanor offense at the time of the third probation-revocation hearing. The district court stated that it was “not concerned” about this offense and that the offense was “not something that would result in revocation of probation.”

DECISION

The district court did not abuse its discretion by revoking probation by finding that the need for confinement outweighed the policies favoring probation.

Appellant argues that the district court abused its discretion by finding that the need for confinement outweighed the policies favoring probation because (1) confinement is not necessary to protect the public from further criminal activity and (2) it would not unduly depreciate the seriousness of the violation if the district court did not revoke probation. We conclude that the district court did not abuse its discretion by finding that confinement was necessary to protect the public, and we do not address appellant's second argument.

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). To revoke 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 (the *Austin* factors). Appellant only challenges the district court's findings on the third *Austin* factor.

The following subfactors are relevant when applying the third *Austin* factor: whether "(i) confinement 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.” *State v. Modtland*, 695 N.W.2d 602, 606-07 (Minn. 2005). “Only one *Modtland* subfactor is necessary to support revocation.” *State v. Smith*, 994 N.W.2d 317, 320 (Minn. App. 2023), *rev. denied* (Minn. Sept. 27, 2023). Though a district court may not reflexively revoke probation in response to a series of technical violations, *State v. Osborne*, 732 N.W.2d 249, 253 (Minn. 2007), a defendant’s history of probation violations can be relevant to determining whether confinement is appropriate, *see State v. Rottelo*, 798 N.W.2d 92, 95 (Minn. App. 2011) (concluding that appellant’s multiple probation violations support finding that need for confinement outweighs policies favoring probation), *rev. denied* (Minn. July 19, 2011). Here, the district court found that the first and third *Modtland* subfactors support revocation.

The First Modtland Subfactor

Appellant argues that the district court abused its discretion by finding that this subfactor supports revocation because he had a minimal criminal history when the sentencing judge imposed the initial sentence, the district court had no concern about his pending misdemeanor offense, and the district court could have imposed a sanction short of revocation.

Caselaw is instructive. In *Smith*, this court concluded that the district court properly found that confinement was necessary to protect the public from appellant’s further criminal activity following his criminal-sexual-conduct conviction when appellant violated the terms of probation by having repeated contact with a minor female, failing to complete

sex-offender treatment, and viewing sexually explicit material. 994 N.W.2d at 319, 321-22.

Similarly here, the district court found that this *Modtland* subfactor supports revocation and reasoned that:

A concern that I have, and I'm going to be kind of blunt here perhaps, but in the pre-sentence investigation report from October 22nd of 2021, kind of the report that [the sentencing judge] had when she sentenced you and everything, there was concern about the risky behavior that you engaged in outside of drug use, but you even said that *when you used drugs you become hyper-sexualized*. The concern that we have, obviously, is that this underlying offense occurred -- involved a criminal sexual conduct while you were in a treatment program, *and you haven't been able to complete a treatment program, and it looks like your use hasn't been deterred*. That's very concerning.

(Emphases added.)

The record supports the district court's findings. The district court referenced the presentence investigation report in which appellant admitted that he becomes hypersexual when using methamphetamine. Because appellant has repeatedly failed to comply with probation requirements that address his drug use, thereby making him more likely to engage in sexually inappropriate behavior, the district court had an appropriate basis to determine that he poses a risk to public safety. We conclude that the district court did not abuse its discretion by determining that this subfactor supports revocation.

Given that the record provides ample support for revoking appellant's probation under this *Modtland* subfactor, we find unpersuasive appellant's arguments that he does not pose a risk to the public because of (1) his limited criminal history and (2) the district

court's lack of concern about the pending misdemeanor offense. We additionally find unpersuasive appellant's argument that, because the district could have imposed a sanction short of revocation, confinement was not necessary to protect the public.

Because only one *Modtland* subfactor is necessary to support revocation, *Smith*, 994 N.W.2d at 320, we do not address whether the district court properly exercised its discretion under the third *Modtland* subfactor.

Affirmed.