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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-708**

State of Minnesota,
Respondent,

vs.

Jeffrey Allen Sellner,
Appellant.

**Filed November 28, 2011
Affirmed
Worke, Judge**

LeSueur County District Court
File No. 40-CR-09-173

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

Brent A. Christian, LeSueur County Attorney, Jason L. Moran, Assistant County Attorney, Le Center, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Michael W. Kunkel, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court abused its discretion in revoking his probation because the need for confinement did not outweigh the policies favoring probation. We affirm.

DECISION

Appellant Jeffrey Allen Sellner argues that the district court abused its discretion in revoking his probation and executing his 36-month sentence. To revoke probation, the district court must find (1) the specific condition that was violated; (2) that the violation was intentional or inexcusable; and (3) that the need for confinement outweighs the policies favoring probation. *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). A district court has broad discretion in determining if the evidence is sufficient to revoke probation, and we will reverse only if that discretion is abused. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005). But whether a district court made the required *Austin* findings is a question of law, reviewed de novo. *Id.*

Appellant challenges only the district court's determination that the need for confinement outweighs the policies favoring probation. Specific to the need-for-confinement factor, the district court considers whether (1) confinement is needed to "protect the public from further criminal activity," (2) correctional treatment is necessary and can most effectively be provided during confinement, or (3) a further stay "would unduly depreciate the seriousness of the violation." *Austin*, 295 N.W.2d at 251. The district court need only find the existence of one of these three sub-factors. *See id.* This

further analysis ensures that the district court does not “reflexively” revoke probation when a violation is established. *Modtland*, 695 N.W.2d at 608.

Appellant pleaded guilty to third-degree criminal sexual conduct. The victim was a 13-year-old girl whom appellant, then 34-years-old, met on MySpace. Appellant engaged in sexual intercourse with the victim and performed oral sex on her while aware of her age. In April 2010, the district court stayed imposition of a sentence, requiring appellant to, among other things: (1) complete sex-offender treatment; (2) abstain from all mood-altering chemicals, including alcohol; (3) have no unauthorized contact with minor females; (4) have no access to or possession of pornography; and (5) have no unauthorized access to the Internet.

By October, it was alleged that appellant violated his probation by failing to complete sex-offender treatment. He had been in treatment for only two months before he was discharged for failing to comply with program rules, failing to be truthful, and having inappropriate contact with a vulnerable 18-year-old female who was hospitalized under the care of mental-health professionals. Appellant also violated his probation by failing to abstain from alcohol consumption, possessing pornography, and accessing the Internet without approval. Problematic items were found in appellant’s bedroom and in common areas of his residence, including: (1) a half-empty bottle of brandy in a dresser drawer; (2) a pornographic DVD; (3) two empty pornographic DVD cases; (4) “countless pairs of women’s, possibly girls’ panties” strewn throughout his bedroom, many of which had been mailed to him; (5) “sex dolls that had been altered and mutilated”—limbs had been removed, hair had been shaved off, and they had slash marks across the chest area;

(6) written references to pornographic websites; and (7) his cellular-phone bill showing that he accessed the Internet.

The district court determined that the need for confinement outweighed the policies favoring probation because appellant is an untreated sex offender who was apparently using alcohol. The district court stated that there were “so many flags that pop up in this case that indicate that confinement is necessary to protect the public from further criminal activity.” The district court reasoned that alcohol is “one of those things that diminishes [appellant’s] ability to control [his] desires and impulses when it relates to sexual conduct.” The district court then connected appellant’s alcohol use and failed treatment to his possession of pornography, leading the district court to conclude that revocation of appellant’s probation was necessary to protect the public. The district court emphasized the need to protect the public by stating that it could not allow appellant another chance on probation when “the next chance almost requires that we have a victim of Criminal Sexual Conduct before we execute the sentence.” The district court acknowledged that it was a “big step,” but stated that it was justified.

The district court also considered the second sub-factor and determined that the treatment appellant needed could best be provided during confinement. Appellant had been discharged from sex-offender treatment without successfully completing the program. The district court stated that the treatment appellant needed could “be more effectively given to him in prison.” The district court acknowledged that appellant may not qualify for prison treatment programs because of the length of his sentence, but stated that appellant would not get effective treatment in the community because the help that

appellant needs did not exist in the community. This determination is supported by the treatment center's assessment that appellant was "considered to be not amenable to treatment and will not be accepted back into [the] program."

Finally, the district court concluded that if it did not revoke appellant's probation it would "unduly depreciate the seriousness of [the violations that had] been proven." Appellant was discharged from sex-offender treatment because he denied his offense behaviors and lied or withheld information, and he had ongoing contact with a vulnerable female even after he was told not to have any contact with her. Appellant's denial of his offenses and continuing contact with a vulnerable female indicates the need to appreciate the seriousness of appellant's violations by revoking his probation. Therefore, the district court did not abuse its discretion in revoking appellant's probation and executing his prison sentence.

Affirmed.