

*This opinion is nonprecedential except as provided by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
A21-0188**

State of Minnesota,
Respondent,

vs.

Keon La Shawn Thomas,
Appellant.

**Filed November 22, 2021
Affirmed
Connolly, Judge**

Kandiyohi County District Court
File No. 34-CR-14-723

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

Shane Baker, Kandiyohi County Attorney, Julianna Passe, Assistant Kandiyohi County
Attorney,
Willmar, Minnesota (for respondent)

John E. Mack, New London Law, P.A., New London, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and
Cochran, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges the district court's decision to revoke his probation and impose a 36-month prison sentence. Because we discern no abuse of discretion in that decision, we affirm.

FACTS

Appellant Keon La Shawn Thomas was charged with four counts of third-degree criminal sexual conduct in 2014 for sexually assaulting a minor several times between 2008 and 2010. He entered a guilty plea in early 2015 and was sentenced to a stay of adjudication for third-degree criminal sexual conduct, 30 days in jail, a fine, and 15 years of probation. He was also ordered to complete a psychosexual evaluation, follow all resulting recommendations, have no contact with minors, remain law abiding, and cooperate with his probation.

Thomas committed ten probation violations over the next six years. The first was in June 2016. He violated the terms of his probation by going to Iowa without permission to visit a woman with whom he was in a relationship and by having unsupervised contact with her minor child. This violation resulted in a probation sanction.

Thomas committed his second probation violation later that same month for being terminated from sex offender treatment. This violation also resulted in a probation sanction, and he was instructed to re-enter treatment within two weeks' time.

Thomas committed his third probation violation in late 2016. He violated the terms of his probation by failing to pay his fine and for failing to remain law abiding. Specifically, he had been convicted in December 2016 in Cerro Gordo County, Iowa, for

misdemeanor assault causing injury or illness after he was arrested for throwing a female victim across the room in front of a minor child. He was found to have violated the terms of his probation and he was reinstated with all previous conditions.

His fourth probation violation came two months later after he was terminated from sex offender treatment for failing to make adequate progress, and for using internet-capable devices to make threats against the victim of his Iowa offense. He was found to have violated the terms of his probation in several ways: for assaultive and threatening behavior, unauthorized internet use, failing to follow through on treatment recommendations, having contact with the Iowa victim, and failing to remain law abiding. He was reinstated on probation with additional conditions, including restricting his internet use to pre-approved and monitored uses only, restrictions from owning internet-capable devices, that he comply with treatment, that he have no contact with the Iowa victim, that he follow all agent directives, that he have no out-of-state travel, and that he engage in no assaultive or threatening behavior.

Thomas's fifth probation violation came in June 2018 for unauthorized internet use. He received a probation sanction reaffirming that he follow internet monitoring requirements.

He committed his sixth probation violation in October 2018. He had once again failed to complete sex offender treatment, and had unsupervised contact with minor females. He was ordered to serve seven days in jail as a result.

Thomas committed his seventh and eighth violations in 2019. He violated his probation in April by possessing three unauthorized internet-capable devices, by using social media, and by continuing to contact the victim of the Iowa offense. He violated his

probation in October by failing to complete sex offender treatment. After a contested revocation hearing on the two violations, the district court revoked the stay of adjudication, convicted Thomas of third-degree criminal sexual conduct, stayed imposition of sentence, reinstated the terms of his probation, and ordered that he serve 120 days in jail.

Thomas committed his ninth probation violation in July 2020 for leaving the state without permission, traveling outside the county of his residence without permission, and for continued contact with the Iowa victim. This violation resulted in a probation sanction that imposed a curfew and GPS monitoring.

Thomas committed his tenth and final probation violation in August 2020. He violated his probation by continued contact with the Iowa victim, by again being terminated from sex offender treatment, and for continuing his unauthorized internet access. The district court held a contested revocation hearing in January 2021. At the hearing, Thomas admitted to two of the alleged violations—that he failed to complete treatment and had unauthorized internet access. His counsel acknowledged Thomas was “on thin ice with the courts” and requested sanctions “that do not include execution of his sentence.”

The district court held a disposition hearing later that same month. Thomas again requested a lesser sanction than execution of a prison sentence—either electronic home monitoring or limited jail time while continuing treatment on probation. But the district court noted Thomas’s “total disregard over the last six years” of his original sentencing order. The district court found “that the policies favoring probation in this case have been overridden by [Thomas’s] behavior and decisions which are anti-social and pro-criminal and have . . . resulted in numerous sanctions, violations, and the sense of this court that as soon as we would discharge [Thomas] from probation he would reoffend.” The district

court further determined Thomas was a risk to public safety, and that “the department of corrections will be in a better place to provide treatment and long-term monitoring” for Thomas. The district revoked the stay of imposition and executed a 36-month prison sentence. Thomas appeals.

DECISION

A district court may revoke probation and execute a probationer’s sentence if it “finds or the probationer admits a probation violation.” Minn. R. Crim. P. 27.04, subd. 3(2)(b)(v). Before revoking probation, the district court must undertake a “three-step analysis”—it 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.” *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). In making this third finding, a district court must consider whether “confinement is necessary to protect the public from further criminal activity by the offender,” or whether “the offender is in need of correctional treatment which can most effectively be provided if he is confined,” or if “it would unduly depreciate the seriousness of the violation if probation were not revoked.” *State v. Fleming*, 869 N.W.2d 319, 330 (Minn. App. 2015), *aff’d on other grounds*, 883 N.W.2d 790 (Minn. 2016). Determining whether the district court made these required findings is a question of law reviewed de novo. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005). But the district court is afforded “broad discretion in determining if there is sufficient evidence to revoke probation,” and its decision “should be reversed only if there is a clear abuse of that discretion.” *Austin*, 295 N.W.2d at 249-50.

Thomas challenges the district court's findings on the third *Austin* factor. He contends the record does not support that he is a risk to public safety, needs treatment that cannot be provided except through confinement, or that his violations were serious enough to warrant revocation. These arguments are unavailing.

The district court specifically found that “the policies favoring probation in this case have been overridden” by Thomas’s “anti-social and pro-criminal” decisions and behavior. The district court relied on Thomas’s numerous sanctions and violations during his time on probation in determining that he remains a risk to public safety. Thomas’s “limited compliance with probation” also drove the district court’s conclusion that “[t]he corrections system and the department of corrections will be in a better place to provide treatment and long-term monitoring of [Thomas] over the course of the next twelve years.” The record amply supports both conclusions.

The district court recounted most of Thomas’s history of violations while making its ultimate findings. These violations include failing to complete sex offender treatment five times over six years, and repeatedly violating his probation in similar ways—possessing internet-capable devices, using the internet inappropriately, continuing unsupervised contact with minors, leaving the state without permission, and continuing to contact the victim from his Iowa offense. And, contrary to Thomas’s assertion on appeal, he has not remained law abiding—he committed a violent offense in Iowa in 2016. That the district court “provided fact-specific reasons explaining its findings” as to the risk Thomas poses to public safety and the need for his confinement demonstrates the district court properly exercised its discretion in revoking his probation. *Fleming*, 869 N.W.2d at 331.

Thomas further contends these findings are insufficient to override the policy consideration that a decision to revoke probation “cannot be a reflexive action to an accumulation of technical violations.” *Id.* at 330. But this policy is overridden where there is “a showing that the offender’s behavior demonstrates that he or she cannot be counted on to avoid antisocial activity.” *Id.* The record of multiple violations due to repeated behaviors demonstrates that Thomas “cannot be counted on to avoid antisocial activity,” and the district court did not abuse its discretion by coming to this conclusion.

Because the district court made findings supported by the record in concluding that the need for Thomas’s confinement outweigh the policies favoring probation, the district court did not abuse its discretion by revoking Thomas’s probation and executing his prison sentence.¹

Affirmed.

¹ Thomas also argues that the district court erred by rejecting his request for alternative sanctions. But the district court considered and expressly rejected his request in reliance on the probation officer’s recommendation that Thomas’s “high level of deviancy, unaccountability, and lack of concern for his conditions of supervision make him a poor candidate for supervision.” This decision is not an abuse of discretion. *See Fleming*, 869 N.W.2d at 331 (affirming the district court’s decision to revoke probation instead of applying alternative sanctions where the district court considered and rejected a request for alternative treatment, and the probation officer believed all alternative treatment options to have been exhausted).