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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2325**

State of Minnesota,
Respondent,

vs.

Ted Joseph Pappas,
Appellant.

**Filed August 20, 2012
Affirmed
Larkin, Judge**

Dakota County District Court
File No. 19HA-CR-10-653

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

James C. Backstrom, Dakota County Attorney, Nicole E. Nee, Assistant County
Attorney, Hastings, Minnesota (for respondent)

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

Considered and decided by Wright, Presiding Judge; Schellhas, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the district court's revocation and execution of his stayed prison sentences. Because the district court did not abuse its discretion in revoking probation, we affirm.

DECISION

The district court revoked appellant Ted Joseph Pappas's stayed prison sentences for second-degree criminal sexual conduct based on its finding that Pappas violated probation "by being discharged from sex offender treatment [at Project Pathfinder] without successfully completing that treatment." On appeal, Pappas claims that "the district court's finding of a violation was incorrect," contending that he "did not violate any specific term in his probation order." Pappas makes the following argument in support of that claim:

[The district court's] probation order did not specify that [Pappas] complete this particular treatment program, nor did it specify that the program be completed within a certain portion of his probation time. At the time of his termination, [Pappas] still had approximately eighteen years remaining on probation. This is ample time for him to successfully complete an alternate treatment program.

The state has the burden of proving an alleged probation violation by clear and convincing evidence. Minn. R. Crim. P. 27.04, subd. 2(1)(c)b. When revoking probation, the 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." *State v. Austin*, 295

N.W.2d 246, 250 (Minn. 1980). 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.” *Id.* at 249-50.

At the sentencing hearing, the district court specifically ordered Pappas to “[p]articipate in and complete sex offender treatment as directed by [his] probation officer.” Pappas began sex-offender treatment at Project Pathfinder after sentencing but was later discharged from the program because he engaged in unauthorized contact with a seven-year-old girl. Testimony at the probation-revocation hearing established that Pappas’s therapist repeatedly advised him not to have unsupervised contact with minor children and gave him tools to control his behavior in this regard. The therapist testified that Pappas was a risk to the community because he was an untreated sex offender who had received therapy to avoid contact with children but nevertheless engaged in such contact. We observe that Pappas did not disclose the contact to his therapist. Instead, Pappas’s probation officer notified Project Pathfinder of the contact.

Pappas’s arguments that a violation could not occur because the court did not specify that he complete treatment at Project Pathfinder or impose a deadline for completion of treatment and that a violation could not occur “until it was no longer possible for [Pappas] to complete a program within his probation period” are unavailing. The unpublished cases that Pappas relies on are neither precedential nor persuasive. *See* Minn. Stat. § 480A.08, subd. 3(c) (2010) (stating that “[u]npublished opinions of the Court of Appeals are not precedential”); *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993) (noting that unpublished opinions are not precedential but may

have “persuasive value”). Moreover, this is not a case in which the revocation was based on a condition that was not ordered. *See State v. Ornelas*, 675 N.W.2d 74, 75 (Minn. 2004) (“In order to support a probation revocation, the condition alleged to have been violated must be a condition of probation that has in fact been imposed by the district court.”). Nor is it a case in which Pappas was without fair warning that his unsuccessful discharge from a sex-offender treatment program could result in probation revocation. *See id.* at 80. (“When the acts prohibited by the probation conditions are not criminal, due process mandates that the petitioner cannot be subjected to a forfeiture of his liberty for those acts unless he is given prior fair warning.” (quotation omitted)).

Because Pappas’s underlying convictions were based on his sexual contact with a ten-year-old girl, it is not surprising that Project Pathfinder’s treatment plan prohibited Pappas from having unsupervised contact with children. The record clearly shows that Pappas was informed of this expectation. Despite his therapist’s admonition that unsupervised contact with children was not allowed, Pappas had unauthorized contact with a seven-year-old girl and was discharged from the program as a result. That discharge establishes Pappas’s failure to “[p]articipate in and complete sex offender treatment as directed by [his] probation officer,” which condition was specifically ordered by the district court. Thus, the district court did not err by finding that Pappas violated a specific condition of probation. *See Austin*, 295 N.W.2d at 250 (holding that the district court must “designate the specific condition or conditions that were violated”).

Although Pappas only challenges the district court's finding on the first *Austin* factor, we observe that the district court made sufficient findings on the second and third factors. *See id.* (holding that the district court must “find that the violation was intentional or inexcusable” and that the “need for confinement outweighs the policies favoring probation”). The district court found that the violation was intentional, relying on the testimony of Pappas's therapist that he advised Pappas not to have unauthorized contact with children and that he provided Pappas with tools to avoid such contact.

The district court also found that the policies favoring probation are outweighed by the need for confinement. The district court reasoned that the contact that led to Pappas's discharge from treatment was with a child who is the same gender and close in age to the victim in the underlying conviction offenses. The district court therefore concluded that confinement is necessary to protect the public from further criminal activity. *See id.* at 250-51 (stating that the third *Austin* factor requires “a balancing of the probationer's interest in freedom and the state's interest in insuring his rehabilitation and the public safety” and that district courts should consider whether “confinement is necessary to protect the public from further criminal activity by the offender” (quotation omitted)). The district court also reasoned that it was not “presented with any type of treatment plan for [Pappas] other than, well, tell probation to figure something out.” The district court therefore concluded that Pappas could more effectively be provided with sex-offender treatment in custody. *See id.* at 251 (stating that with regard to the third *Austin* factor, district courts should consider whether “the offender is in need of correctional treatment which can most effectively be provided if he is confined”).

In sum, the district court made all of the findings necessary to revoke Pappas's probation and did not abuse its discretion in doing so.

Affirmed.