

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2016).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2060**

State of Minnesota,
Respondent,

vs.

Johnathan Phillip Block,
Appellant.

**Filed July 24, 2017
Affirmed
Smith, Tracy M., Judge**

Isanti County District Court
File No. 30-CR-15-14

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

Jeffrey Edblad, Isanti County Attorney, Cambridge, Minnesota (for respondent)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Peterson, Judge; and Connolly, Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant argues that, because the state failed to establish that the need for confinement outweighed the policies favoring probation, the district court abused its discretion by revoking his probation. We affirm.

FACTS

In January 2015, respondent State of Minnesota charged appellant Johnathan Phillip Block with three counts of third-degree criminal sexual conduct. The complaint alleged that Block violated Minn. Stat. § 609.344, subd. 1(b) (2014), by having sexual intercourse with a minor female on three occasions in 2014. Block pleaded guilty to one count of third-degree criminal sexual conduct, and the two additional counts were dismissed. The district court sentenced Block to a stayed 36-month sentence and placed him on probation for 15 years. Block's probation conditions included the following: (1) complete the Teen Challenge chemical-dependency program; (2) do not use any controlled substances; (3) do not possess or use pornographic or sexually explicit material; (4) do not use the internet without prior approval from his probation agent; (5) do not have contact with persons under age 18 without prior approval from his therapist or probation agent; and (6) maintain contact with his probation agent.

In December 2015, Block's probation agent filed a probation-violation report, which alleged that Block left Teen Challenge prior to completing the program and failed to maintain contact with his probation agent. After Block was arrested in March 2016, the probation-violation report was amended to allege that Block had further violated the conditions of his probation by using a controlled substance, posting a picture from a pornographic website on his Facebook page, accessing his Facebook page without prior approval, and having a relationship with a 17-year-old female.

Block remained in jail until his probation-revocation hearing in September 2016. At this uncontested hearing, Block admitted to all of the alleged violations except for

failure to maintain contact with his probation agent, which the state dismissed. The district court revoked Block's probation and executed his 36-month prison sentence after finding that Block had intentionally and inexcusably violated the conditions of his probation, that Block was a public-safety risk, and that "placing [Block] back on probation would unduly depreciate the seriousness of the violations." The district court gave the following explanation for its decision:

Mr. Block, if all we were dealing with today is walking away from Teen Challenge, it would be very easy for me. The concern I have, to be very honest with you, is you are on probation for a criminal sexual conduct charge and you post porn on your Facebook site, and you are having a relationship with somebody that's under 18.

Block appeals.¹

DECISION

Block argues that, because the state failed to establish that the need for confinement outweighed the policies favoring probation, the district court abused its discretion by revoking his probation. Specifically, Block challenges the district court's findings that his behavior created a public-safety risk and that reinstating probation would unduly depreciate the seriousness of his violations.

"The [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). When an offender

¹ Because the state did not file a responsive brief, we decide this appeal on the merits under Minn. R. Civ. App. P. 142.03.

violates a condition of probation, the district court may revoke probation and execute the previously stayed sentence. Minn. Stat. § 609.14, subd. 3 (2014). Before revoking probation and executing the stayed sentence, 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.” *Austin*, 295 N.W.2d at 250. “The decision to revoke cannot be a reflexive reaction to an accumulation of technical violations but requires a showing that the offender’s behavior demonstrates that he or she cannot be counted on to avoid antisocial activity.” *Id.* at 251 (quotations omitted).

Block only challenges the district court’s finding under the third *Austin* factor, which requires the court to balance an offender’s interest in remaining at liberty against the state’s interest in rehabilitation and public safety. *Id.* at 250. This factor is satisfied if the district court finds that (1) “confinement is necessary to protect the public from further criminal activity by the offender,” (2) “the offender is in need of correctional treatment which can most effectively be provided if he is confined,” or (3) “it would unduly depreciate the seriousness of the violation if probation were not revoked.” *Id.* at 251 (quotation omitted).

Here, Block admitted to, and does not refute on appeal, five probation violations. Although the district court’s probation-revocation decision cannot be based on an accumulation of technical violations, Block’s admitted violations include posts on his Facebook page involving pornography and his relationship with a 17-year-old female. As the district court explained, these actions are concerning because they violated probation

conditions that were directed at correcting his criminal sexual behavior. In light of these violations, the district court reasonably found that Block was a public-safety risk and that placing him back on probation would unduly depreciate the seriousness of the violations. Moreover, the district court provided context for its findings by noting the connection between Block's multiple violations and his original criminal-sexual-conduct offense. Contrary to Block's argument, the district court's findings under the third *Austin* factor are not conclusory or rote. Accordingly, the district court did not clearly abuse its discretion by revoking Block's probation.

Affirmed.