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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0645**

State of Minnesota,
Respondent,

vs.

Daniel Amor,
Appellant.

**Filed December 18, 2017
Affirmed
Ross, Judge**

Kandiyohi County District Court
File No. 34-CR-09-574

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

Shane D. Baker, Kandiyohi County Attorney, Aaron P. Welch, Assistant County Attorney, Willmar, Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Daniel Amor appeals from the district court's order revoking his probation and executing his 33-month prison sentence for second-degree criminal sexual conduct. Amor

argues that the district court reflexively revoked his probation based on its unsupported finding that he failed to complete sex-offender treatment. Because the record supports the district court's conclusion that Amor intentionally and inexcusably violated a condition of his probation and that the need for his confinement outweighs the policies favoring probation, we affirm.

FACTS

Daniel Amor entered an *Alford* guilty plea to second-degree criminal sexual conduct in April 2010. The district court imposed a stayed sentence of 33 months' imprisonment and 25 years' probation. The district court conditioned Amor's probation on various requirements, including that he follow the recommendations of a psychosexual examination and meet with a therapist. The psychologist who conducted Amor's psychosexual examination recommended, among other things, that Amor complete sex-offender treatment. The sentencing judge warned Amor that if he lied or otherwise failed to cooperate in treatment, the court would revoke his probation. Amor began treatment through a plan administered by CORE Professional Services P.A. in 2010.

Amor's probation officer recommended in 2015 that the district court revoke Amor's probation. The officer had various concerns, including those stated in a letter from CORE revealing that it had terminated Amor from its treatment program because he failed to pay fees, failed to sufficiently progress, failed treatment assignments, failed to attend all scheduled sessions, and appeared to lack motivation to complete the program. Amor admitted that he was discharged from the CORE program, had contact with minor females, left the state without permission, and failed to be truthful with his probation officer. The

district court found that Amor intentionally and inexcusably violated conditions of his probation. It urged Amor to participate in treatment and to be truthful. It found that rehabilitation efforts should continue and maintained the probation.

In August 2016, Amor's probation officer learned that CORE had again terminated Amor's treatment and he again reported the violation to the district court. The district court heard testimony from Amor, CORE therapist Rebecah Hoffman, and Amor's expert witness, Richard Ascano, clinical director for Lakeland Mental Health Center. Amor testified that his poor relationship with Hoffman made it difficult for him to actively participate in treatment. Hoffman testified that Amor was not adequately progressing, not following the recommendations of CORE staff, minimizing his sexual-offense history, inconsistently disclosing necessary information, and, despite multiple extensions, never scheduling his "maintenance polygraph" examination (which CORE uses to assess treatment compliance). Ascano opined that Amor is a low-risk offender who should not be imprisoned and who could be treated without confinement.

The district court found that Amor intentionally and inexcusably failed to complete sex-offender treatment and that his need for confinement outweighs policies favoring probation. It executed Amor's 33-month prison sentence. Amor appeals.

DECISION

Amor challenges the district court's decision to revoke his probation. Before it revokes probation, the district court must find that (1) the offender violated a specific condition of probation, (2) the violation was intentional or inexcusable, and (3) the need to confine the offender outweighs the policies favoring probation. *State v. Austin*, 295 N.W.2d

246, 250 (Minn. 1980). Whether the district court has made adequate findings is a question of law that we review de novo. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005). But we review the district court's application of the *Austin* factors for an abuse of discretion. *Id.* Amor argues that the district court erred in every step. We address each one.

The district court first found that Amor violated a specific condition of probation: completing sex-offender treatment. Amor maintains that the condition did not identify any *specific* sex-offender treatment and therefore cannot support the specific-condition finding. He adds that, even if the condition did require him to complete CORE's treatment plan specifically, he had many years of probation and the condition included no deadline. But a probationer who has no intention to complete sex-offender treatment can be found to have violated probation even if the condition does not specify a deadline or any particular treatment program. *See State v. Rock*, 380 N.W.2d 211, 212–213 (Minn. App. 1986), *review denied* (Minn. Mar. 27, 1986). And the district court had in fact put Amor on notice that he must complete CORE treatment specifically, premising Amor's previous probation violation in part on his failure to participate in the CORE program. This defeats Amor's argument on the first step.

Amor challenges the district court's next step, contesting its finding that the violation was intentional and inexcusable. A probationer who does not intend to complete treatment intentionally and inexcusably violates a condition of probation or is unamenable to the treatment. *See id.* Amor maintains that his attempt to meet with a different therapist and his expert's testimony about his alleged anxiety about treatment at CORE prove that his violation was excusable and unintentional. This is akin to the weight-of-the-testimony

argument that the supreme court rejected in *Austin*. 295 N.W.2d at 248–50 (rejecting arguments that appellant’s violation was excusable because he feared starting the assigned drug-treatment program and that it was unintentional based on his effort to enter other programs). Amor’s individual-therapist requirement was distinct from the requirement to complete treatment. His effort to secure a different therapist therefore does not impact his failure to complete treatment. And inasmuch as his expert’s opinion that Amor failed treatment because of anxiety was inconsistent with Hoffman’s testimony that Amor failed treatment because he lacked effort, the district court sitting as fact-finder was free to choose which theory best fit the evidence. The district court did not abuse its discretion by determining that Amor intentionally and inexcusably failed the CORE program.

Amor argues finally that the district court revoked his probation without balancing the policies favoring probation against the need for his confinement. But the district court explained why the need for Amor’s confinement outweighs policies favoring his continued probation in part by outlining the evidence showing why Amor needed confinement: even after “the Court allowed him to be reinstated on probation” he still failed to schedule a polygraph examination; “he was unable to successfully complete the program [because] he was minimizing his involvement and he was denying responsibility”; he had been failing to “invest[] in the program” by “mak[ing] meaningful efforts to comply with the program”; and he was failing “to be honest while he was meeting with the staff.” The reasoning is adequate.

We are satisfied that the district court acted within its discretion by revoking Amor's probation.

Affirmed.