

*This opinion is nonprecedential except as provided by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
A21-1738**

State of Minnesota,
Respondent,

vs.

Alfonso Carillo Buenaventura,
Appellant.

**Filed August 8, 2022
Affirmed
Slieter, Judge**

St. Louis County District Court
File No. 69VI-CR-19-322

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

Kim Maki, St. Louis County Attorney, Aaron Welch, Assistant County Attorney, Virginia,
Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Slieter,
Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant challenges the revocation of his probation, arguing that the evidence does not support one of the two alleged violations, and that the district court abused its discretion by concluding that the need for confinement outweighs the policies favoring probation.

The record supports the district court’s finding that appellant violated two conditions of probation, and it properly considered the *Modtland* subfactors. Therefore, we affirm.

FACTS

In December 2019, appellant Alfonso Carillo Buenaventura pleaded guilty to second-degree criminal sexual conduct, in violation of Minn. Stat. § 609.343, subd. 1(b) (2018). The district court accepted the plea and stayed execution of a 36-month prison term for five years, subject to several conditions.

Among his conditions of probation, Buenaventura was required to “enter, participate in, and successfully complete a sex offender treatment program” and was prohibited from “use of or access to the internet through any technology or third party for social networking sites, dating sites, or sexually explicit/pornographic materials as determined by probation unless specifically approved by probation.”

In February 2020, Buenaventura’s probation officer filed a first probation-violation report alleging that Buenaventura violated the conditions of his sentence by accessing sexually explicit materials on the internet. Based on this report, the district court revoked his probation and issued an order for his apprehension. After Buenaventura admitted to this violation, the district court reinstated his probation.

In May 2021, Buenaventura’s probation officer filed a second probation-violation report, which alleged that Buenaventura violated probation by failing to complete sex-offender treatment and by accessing social media. The report recommended revoking probation “due to his inability to complete [treatment] while being out in the community,” and that treatment “would most effectively be provided if he is confined.”

During a contested probation-violation hearing, the probation officer testified and the district court received the probation officer's notes as well as records from Buenaventura's sex-offender treatment provider. The district court found that Buenaventura had violated the conditions of his probation, revoked Buenaventura's probation, and executed the 36-month prison term. Buenaventura appeals.

DECISION

“The trial 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). “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). Before 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.” *Austin*, 295 N.W.2d at 250.

Buenaventura argues that the district court abused its discretion in revoking his probation because “there was no direct evidence that [he] personally accessed the . . . internet” and “there was simply no showing that the need for confinement in prison outweighed the alternatives.” We are not persuaded.

Buenaventura violated two conditions of probation.

Probation violations must be proved by clear and convincing evidence. Minn. R. Crim. P. 27.04, subd. 2(1)(c)(b). The clear and convincing “standard is met when the truth

of the facts sought to be admitted is highly probable.” *State v. Miller*, 754 N.W.2d 686, 701 (Minn. 2008) (quotation omitted).

Buenaventura does not challenge the district court’s finding that he failed to successfully complete sex-offender treatment. This failure alone would have been a sufficient basis to find a violation of the express conditions and consider revoking probation. *See Austin*, 295 N.W.2d at 248-52 (affirming revocation of probation where failure to follow through with chemical-dependency treatment was the only violation alleged).

A separate condition of his probationary sentence prohibited Buenaventura from accessing “the internet through any technology or third party for social networking sites . . . unless specifically approved by probation.” And contrary to Buenaventura’s argument, the state did not have to prove that he accessed social media “personally.”

The record supports the district court’s finding that clear and convincing evidence demonstrates Buenaventura accessed a social networking site, either directly or indirectly. Buenaventura’s probation officer testified that she observed that Buenaventura’s Facebook profile picture had changed at least three times while he was subject to the conditions of probation, and one profile picture was of a Kobe Bryant trading card with the victim’s name written on it. Records from Buenaventura’s sex-offender treatment also show that he admitted to “logging into” Facebook.

The district court properly considered the Modtland subfactors before revoking probation.

The third *Austin* factor reflects the policy considerations favoring revocation of probation “only as a last resort when treatment has failed,” which balances “the probationer’s interest in freedom and the state’s interest in insuring his rehabilitation and the public safety.” *Austin*, 295 N.W.2d at 250-51. Revoking probation “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 (quotation omitted). When determining if these policy considerations favor revoking probation, the district court should consider whether:

- (i) confinement is necessary to protect the public from further criminal activity by the offender; or
- (ii) the offender is in need of correctional treatment which can most effectively be provided if he is confined; or
- (iii) it would unduly depreciate the seriousness of the violation if probation were not revoked.

State v. Modtland, 695 N.W.2d 602, 607 (Minn. 2005) (quoting *Austin*, 295 N.W.2d at 251). We refer to these as the *Modtland* subfactors.

The district court concluded that Buenaventura’s repeated failure to comply with the terms of his sentence and “deflection for every circumstance” showed that he was “in need of correctional treatment that can only be completed in a correctional facility, and more importantly it would diminish the seriousness[] of the ultimate violations if the Court were not to execute the sentence.” Thus, contrary to Buenaventura’s claim, the district court properly considered two *Modtland* subfactors and, moreover, the record supports its conclusions.

Buenaventura was terminated from outpatient treatment “due to his lack of progress and investment in treatment along with his social media presence.” Before the district court announced its disposition, Buenaventura stated that he “believe[d] that [he] didn’t do anything wrong,” blamed his lack of success in sex-offender treatment on difficulties posed by COVID-19-related restrictions, and alleged that being barred from using the internet violated his constitutional rights.

The district court properly exercised its sound discretion and did not revoke Buenaventura’s probation in a “reflexive reaction to an accumulation of technical violations.” *Austin*, 295 N.W.2d at 251 (quotation omitted).

Affirmed.