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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-0767**

State of Minnesota,  
Respondent,

vs.

Craig Desrosiers,  
Appellant.

**Filed January 21, 2014  
Affirmed  
Hooten, Judge**

Anoka County District Court  
File No. 02-CR-10-7079

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

Anthony C. Palumbo, Anoka County Attorney, Donald LeBaron, Assistant County  
Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public  
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Stoneburner, Judge; and  
Hooten, Judge.

**UNPUBLISHED OPINION**

**HOOTEN**, Judge

Appellant challenges the revocation of his probation on the grounds that the  
district court abused its discretion in finding that the need for confinement outweighs the

policies favoring probation. We affirm.

## FACTS

In September 2010, Anoka County deputies responded to reports that appellant Craig Desrosiers was in his neighborhood with guns. He was charged with two counts of second-degree assault with a dangerous weapon and two counts of terroristic threats. Pursuant to a plea agreement, appellant entered an *Alford* plea for the second-degree assault charges. *See North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167 (1970) (permitting a defendant to enter a guilty plea while maintaining his innocence); *State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977) (adopting *Alford* pleas in Minnesota). The state dismissed the two counts of terroristic threats, and appellant was required to complete a psychological evaluation prior to sentencing.

The district court accepted appellant's *Alford* plea and sentenced appellant to two consecutive 36-month terms of imprisonment. The district court stayed the execution of both sentences and placed appellant on supervised probation for 14 years. Appellant was sentenced to serve one year in jail, with the final 120 days to be served on electronic home monitoring. The district court acknowledged that this was a dispositional departure, finding that it was warranted because appellant was amenable to probation and did not have a criminal history. Appellant's probation terms included orders to refrain from "assaultive, disorderly, threatening, violent or intimidating behavior, or any of those crimes supported by probable cause," and to "remain law abiding and of good behavior."

Appellant was in custody until February 16, 2012. Within a short time after his release, appellant assaulted his wife and was charged with and convicted of misdemeanor

assault. At the probation-revocation hearing, appellant admitted that he had been convicted of assault and that the conviction violated the conditions of his probation. The district court found that appellant's conduct was intentional and inexcusable and that appellant violated the conditions of his probation by failing to refrain from assaultive, threatening, disorderly, violent or intimidating behavior, and by failing to remain law abiding and of good behavior.

The district court also found that the need for confinement outweighed the policies favoring probation:

I believe that probation is not working for you. . . . I believe that . . . if you're not confined to prison, that it would unduly depreciate the seriousness of your violation.

. . . I did give you a break, a tremendous break, on your sentence and had hoped that you would cooperate in some capacity with [c]orrections, but you haven't done so. . . . [Y]our wife, your family, your support structure . . . has similarly not sought . . . to encourage you and to help you . . . in that endeavor. . . . I think that . . . you are in need of . . . correctional treatment. You can get that in prison, and that will be the way that you're going to have to get help.

. . . I think the . . . confinement is necessary to protect the public . . . and your wife from further potential assaults.

This appeal follows.

## 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). Under *Austin*, the district court must make findings regarding three factors before it can revoke probation:

(1) the specific condition of probation that has been violated; (2) the violation was intentional or inexcusable; and (3) the need for confinement outweighs the policies favoring probation. *Id.* at 250. The third *Austin* factor is satisfied if confinement is needed to protect the public from further criminal activity by the offender; confinement is necessary to provide treatment; or a further stay of the sentence would unduly depreciate the seriousness of the violation. *Id.* at 251.

Appellant argues that the third *Austin* factor is not satisfied because the district court committed reversible error in its findings that confinement is necessary to protect the public and that confinement is necessary to provide treatment. We disagree.

As an initial matter, a district court may find the third *Austin* factor satisfied if any one of the three sub-factors is present. *See id.* Appellant does not challenge the district court's finding relative to the third sub-factor: not revoking the probation would unduly depreciate the seriousness of the violation. Accordingly, this unchallenged sub-factor alone satisfies the third *Austin* factor.

Additionally, we conclude that the district court did not abuse its discretion in finding that the other two sub-factors of the third *Austin* factor are satisfied. With regard to the public-safety sub-factor, appellant asserts that "the safety issues were eliminated when, as indicated by the state, [a]ppellant's ex-wife moved out of [a]ppellant's home." But there is no evidence corroborating counsel's speculation that appellant's ex-wife no longer resides with appellant. And even if true, appellant could still assault his ex-wife outside of the home. The inquiry is whether appellant is a threat to the public safety in general, not to his ex-wife specifically. Based on appellant's previous conduct of

threatening his neighbors with a dangerous weapon and the misdemeanor assault against his ex-wife, the district court acted within its discretion to find that appellant continued to be a threat to public safety.

With respect to the remaining sub-factor, appellant argues that he was mentally unstable but nonetheless amenable to mental-health treatment outside of custody. He argues that because less than 90 days had elapsed between his release from custody and his assault of his ex-wife, he did not have enough time to seek treatment. But appellant fails to articulate what, if anything, he had done to seek mental-health assistance. Appellant had over 80 days after his release from custody to seek mental-health assistance, chose not to do so, and could not provide any justification for failing to do so. The district court, therefore, was within its discretion to find that confinement is necessary in order for appellant to receive treatment.

The record supports the district court's finding that the need for confinement outweighs the policies favoring probation.

**Affirmed.**