

*This opinion is nonprecedential except as provided by  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  
A23-0334**

State of Minnesota,  
Respondent,

vs.

Derek Charles Megraw,  
Appellant.

**Filed October 23, 2023  
Affirmed  
Johnson, Judge**

Mower County District Court  
File No. 50-CR-20-1301

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

Kristen Nelsen, Mower County Attorney, Scott K. Springer, Assistant County Attorney,  
Austin, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrew J. Nelson, Assistant  
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and Kirk,  
Judge.\*

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant  
to Minn. Const. art. VI, § 10.

## NONPRECEDENTIAL OPINION

**JOHNSON**, Judge

Derek Charles Megraw pleaded guilty to four counts of possessing pornographic work involving minors. He received a stayed sentence and was placed on probation. The district court later revoked Megraw's probation after finding that he committed four violations of conditions of his probation. We conclude that the district court did not err by finding that the need for confinement outweighs the policies favoring probation. Therefore, we affirm.

### FACTS

In July 2020, law-enforcement officers searched Megraw's home pursuant to a warrant and seized various computers, electronic devices, and storage media. The state thereafter charged Megraw with five counts of possessing pornographic work involving a minor, in violation of Minn. Stat. § 617.247, subd. 4(a) (2016). Additional investigation revealed that Megraw possessed more than 400,000 digital files that were suspected of containing child pornography. The state filed an amended complaint in which it charged Megraw with five additional counts of possessing pornographic work involving minors.

In May 2022, Megraw and the state entered into a plea agreement by which Megraw agreed to plead guilty to counts 6, 7, 8, and 9 and the state agreed to dismiss the remaining counts. Megraw admitted at a plea hearing that he downloaded the four digital files corresponding to counts 6, 7, 8, and 9 on dates in 2017, 2018, 2019, and 2020, respectively. The district court ordered a pre-sentence investigation, including a psychosexual evaluation.

At the sentencing hearing in September 2022, the state noted that the psychologist who conducted the psychosexual evaluation recommended that Megraw not have any contact with his 18-year-old stepdaughter, M.D. The state urged the district court to adopt that recommendation and to extend it to M.D.'s twin sister, F.D. The district court imposed concurrent stayed sentences of 15, 20, 25, and 30 months, respectively, and placed Megraw on probation for seven years. Among the numerous conditions of probation was the condition that Megraw not have unsupervised contact with minors without the approval of his probation agent and, in addition, not have contact with M.D. or F.D. without the approval of his probation agent.

In October 2022, law-enforcement officers received a report that Megraw was living in the same home as M.D. and F.D. In November 2022, a police officer and Megraw's probation agent conducted a search of the home. M.D., F.D., and Megraw were present at the home at the time of the search. Megraw was observed exiting a basement bedroom wearing only a bathrobe. The police officer believed that Megraw had been sleeping in the bedroom. Inside the bedroom, a police officer found a student-identification card belonging to M.D. and female clothing in a dresser. M.D. admitted to the officer that she sometimes slept in the same bed as Megraw, but she denied engaging in sexual activity with him. Megraw's probation agent also found a cell phone, which was seized and examined.

In November 2022, Megraw's probation agent filed a probation-violation report alleging that Megraw violated four conditions of his probation: (1) possessing an unmonitored cell phone, (2) using the unmonitored cell phone to search the internet for

pornography, (3) having contact with M.D. and F.D. by residing in the same home in which they resided, and (4) having contact with M.D. via text messages.

In December 2022, the district court held a contested revocation hearing. At the outset of the hearing, Megraw admitted most of the allegations but denied conducting internet searches on the seized cell phone, which he said belonged to his employer and was used by multiple employees. Megraw's probation agent testified that the seized cell phone contained text messages between Megraw and M.D. that began in August 2022—three months after the plea hearing and one month before the sentencing hearing—and continued until seven days after the sentencing hearing. The probation agent also testified that the dates and times of the text messages generally coincided with the dates and times of the pornography-related internet searches.

When allowed to address the court near the conclusion of the hearing, Megraw stated that he was allowed to live with M.D. and F.D. before sentencing and did not want to evict them from his home after sentencing because their mother and father do not provide for them. He stated further that it was financially difficult for him to live elsewhere, that he was “trying to survive,” and that he had since found a new place to live apart from M.D. and F.D.

The district court found that Megraw had committed each of the alleged probation violations, that the violations were intentional and inexcusable, and that the need for confinement outweighed the policies favoring probation. The district court revoked Megraw's probation and executed his prison sentences. Megraw appeals.

## DECISION

Megraw argues that the district court erred by revoking his probation and executing his prison sentences.

If a probationer violates one or more conditions of probation, a district court may either continue the probationer on probation or revoke probation and execute the underlying sentence. Minn. R. Crim. P. 27.04, subd. 3(2)(b)(iv)-(v). The supreme court has prescribed a three-step analysis to guide district courts in deciding whether to revoke probation. *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). A district court may revoke probation only if the court (1) designates the specific conditions of probation that have been violated, (2) finds that the violations were “intentional or inexcusable,” and (3) finds “that need for confinement outweighs the policies favoring probation.” *Id.* A district court may find that the third *Austin* factor is satisfied if it finds that any of three sub-factors are present: (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) a further stay of the sentence “would unduly depreciate the seriousness of the violation.” *Id.* at 251 (quoting A.B.A. Standards for Criminal Justice, Probation § 5.1(a) (Approved Draft 1970)). In making these findings, district courts “must seek to convey their substantive reasons for revocation and the evidence relied upon.” *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005). An appellate court applies an abuse-of-discretion standard of review to a district court’s decision to revoke probation. *Id.* at 605.

In this case, the district court found that Megraw violated conditions of his probation in four ways and made express findings with respect to each of the three *Austin* factors. Megraw challenges the district court's findings only with respect to the third *Austin* factor: that the "need for confinement outweighs the policies favoring probation." *See Austin*, 295 N.W.2d at 250.

The district court found that the third *Austin* factor is satisfied based on the third sub-factor: that a further stay of the sentence "would unduly depreciate the seriousness of the violation." *See id.* at 251 (quotation omitted). In doing so, the district court found that Megraw was not credible in denying that he used the seized cell phone for conducting pornography-related internet searches. But the district court focused primarily on the fact that Megraw contacted M.D. by text messages only one week after sentencing and was living with M.D. and F.D. only one month after sentencing. The district court described those violations as "serious and egregious," adding that it appeared that Megraw had "groomed these girls up until they became eighteen." The district court stated to Megraw that, "within a week of sentencing, you should have been on your best behavior," and "if that's your best behavior, then there really isn't any help here."

Megraw contends that, as stated in *Austin*, the "purpose of probation is rehabilitation and revocation should be used only as a last resort when treatment has failed." *See id.* at 250. Quoting further from *Austin*, he contends, "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." *See id.* at 251 (quotations omitted).

The record supports the district court's finding that continuing Megraw on probation would unduly depreciate the seriousness of his probation violations. Megraw violated conditions of his probation in multiple ways soon after his sentencing hearing. He contacted M.D. by text only seven days after sentencing. He was living in the same home as M.D. and F.D. only one month after sentencing. The record indicates that Megraw sometimes slept in the same bed as M.D. Megraw contends that his residing with M.D. and F.D. is "understandable" inasmuch as he initially moved out of the home he previously shared with them and lived in his car, which was difficult. Despite Megraw's explanation, the number, gravity, and timing of his violations supports the district court's finding that continuing him on probation would unduly depreciate the seriousness of his probation violations.

Megraw also contends that the district court erred by not imposing intermediate sanctions, such as a jail sentence, sex-offender treatment, or a GPS bracelet, which were recommended by Megraw's probation agent. A district court's discretion is not necessarily confined by a probation agent's recommendation. *See State v. Fortner*, 989 N.W.2d 368, 375 (Minn. App. 2023). Indeed, a district court must make an independent determination as to whether probation should be revoked and may, if appropriate, reject a joint recommendation for intermediate sanctions. *Id.* at 375-76. In this case, however, the parties and the probation agent did not agree on intermediate sanctions. The probation agent testified at the revocation hearing that he did "not disagree with" the state's request for revocation, and he expressed concern that Megraw was not amenable to probation. Megraw asserts that the district court should have expressly stated why revocation was

preferred over intermediate sanctions. But Megraw does not cite any authority for the proposition that a district court must make express findings of that type, and we are not aware of any such caselaw. The district court surely was aware of the availability of intermediate sanctions but determined that revocation was warranted. The district court did not abuse its discretion in making that decision.

In sum, the district court did not err by revoking Megraw's probation and executing his sentences.

**Affirmed.**