Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-169

MAY TERM, 2005

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Chittenden Circuit
James Villa	}	
	}	DOCKET NO. 1282/1283-3-96 CnCr
		Trial Judge: James Crucitti

In the above-entitled cause, the Clerk will enter:

Defendant appeals from an order revoking his probation and imposing the underlying sentences on convictions for sexual assault on a minor and lewd and lascivious conduct with a child. Defendant argues that the grounds for revocation were not proven. We affirm.

In 1996, defendant pled guilty to one count of sexual assault on his minor daughter C.V. and two counts of lewd and lascivious conduct with a child. The district court sentenced him to serve seven to twelve years on the sexual assault conviction, and consecutive terms of one to five years on the two counts of lewd and lascivious behavior. The court suspended the sentences and placed defendant on probation. Defendant's probation conditions prohibited him from having any contact with minor females or having contact with C.V. absent permission from her therapist and defendant's probation officer. The conditions also required defendant to undergo sex offender counseling as recommended by his probation officer.

In November 2003, defendant's probation officer filed a complaint alleging that defendant had violated his probation conditions. The complaint alleged that defendant had contact with a minor female when he took a ride in a car with his son and baby granddaughter in March 2002. The complaint stated that in April 2003, defendant had contact with C.V. without permission from either her therapist or his probation officer. In October 2003, defendant again drove in a car with C.V., and while driving, they picked up a man defendant knew from his sex offender treatment group. On that occasion, C.V.'s infant daughter was in the car. The probation violation complaint also explained that defendant has a history, dating back to 1975, of sexual offenses against minors. Defendant has six known child victims, the complaint explained, and he is at a high risk to reoffend. The probation officer recommended that the court revoke his probation and impose the underlying sentences.

The court convened a hearing on the complaint in February 2004. Defendant admitted to the violations relating to his contact with C.V., but he contended that the violations were de minimis and did not warrant revocation of his probation. The court scheduled a contested hearing on sentencing, which took place the next month. After hearing from defendant and his supporting witnesses, the court revoked defendant's probation and ordered him to serve the underlying sentences. Defendant filed this appeal.

On appeal, defendant argues that the court failed to make the findings necessary to support probation revocation, and in any event, the record does not support the court's sanction for the de minimis violations at issue here. We

disagree. The district court may revoke probation if it finds that the defendant violated any term or condition of probation, and further finds that

> (1) Confinement is necessary to protect the community from further criminal activity by the probationer; or
>
> (2) The probationer 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.

28 V.S.A. § 303(b). The court is not required to "specifically identify which of the alternatives set forth in § 303(b) it has employed so long as at least one readily supports the court's conclusion." State v. Millard, 149 Vt. 384, 387 (1988).

Here, the court found that the probation restrictions were clearly set out in the probation order and contract with the State. In addition, defendant's probation officer made those conditions clear to him on a number of occasions. Defendant testified that he understood the conditions and agreed that he violated them anyway. The conditions, the court found, were designed to protect defendant's victims, including his own daughter. They were imposed to prevent defendant from reoffending and creating a new set of victims. The court's findings leave no doubt that it considered defendant was at risk of reoffending and that confinement was necessary to protect the community. 28 V.S.A. § 303(b)(1).

Defendant argues that in the absence of evidence that he reoffended or that "he was associating with minor females in high-risk situations," the court could not conclude that confinement was necessary to protect the community. Defendant contends that he is rehabilitated. He testified at the sentencing hearing that he simply became lackadaisical towards the probation conditions because he was nearing the end of one of his sentences.

The court did not find that defendant was rehabilitated notwithstanding defendant's belief otherwise. The fact that defendant violated the clear terms of his probation by engaging in conduct that did not involve another sexual assault or offense against a child is fortunate. But that type of criminal conduct is not a prerequisite to finding that confinement is necessary to protect the public against the possibility that defendant might reoffend. Given defendant's criminal history and his knowing and repeated violations of the terms of his probation, the court explained that it would be irresponsible to, essentially, wag a finger at defendant and let him continue on probation. The court's decision to revoke defendant's probation is supported by the record.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice