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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-387

JUNE TERM, 2010

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Bennington Circuit
	}	
Terry W. Putnam	}	DOCKET NO. 276-3-08 Bncr
		Trial Judge: John P. Wesley

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

Defendant appeals the district court's order revoking his probation and imposing the full underlying sentence. We affirm.

In May 2008, defendant pled guilty to second degree unlawful restraint of a person less than sixteen years of age, domestic assault, and reckless or grossly negligent operation of a motor vehicle. The charges stemmed from an incident in which defendant took complainant's sixteen-year-old son from her home against her wishes, pushed her to the ground in the process, and then drove his car in a threatening manner as he left her premises. For these actions, defendant received three concurrent sentences resulting in a two-to-five-year term of imprisonment, all suspended with probation imposed. To satisfy his probation conditions, which did not prohibit contact with complainant, defendant participated in counseling, the Batterer's Intervention Program, and a parenting course.

Defendant and complainant ended their relationship in March 2009, but tensions continued concerning defendant's visitation with their daughter. In July 2009, defendant appeared uninvited at complainant's home and frightened her son into letting him in. For the next three hours, defendant loudly insisted that he would not leave without the parties' child and all of his property. Complainant's son barricaded himself, defendant's daughter, and two visiting children, in a room in the home until others arrived to defuse the situation. Defendant was arrested and, in a follow-up urinalysis, tested positive for THC. Defendant's probation officer filed a complaint citing violations of various probation conditions. At the merits hearing, the district court found violations connected with defendant using drugs and engaging in threatening and criminal behavior. Following the sentencing hearing, the court revoked probation and imposed the full underlying sentence. In doing so, the court noted that although defendant had engaged in the required probationary programs, he had not benefitted from the programs and had engaged in behavior disturbingly similar to the behavior that had led to the underlying convictions.

On appeal, defendant argues that the court abused its discretion in imposing the underlying sentence. In his view, the original conditions of probation, not the rehabilitative purposes of probation, had failed. According to defendant, he is not to blame for the fact that the

probation conditions were insufficient to control his behavior with respect to complainant. He contends that he may be considered a threat to her, but not to society in general. He asserts that he would be better served by the court imposing more stringent conditions that required more counseling and no contact with complainant.

We find these arguments unavailing. A court's discretionary ruling on whether to impose an underlying sentence following a probation violation is not subject to revision "unless it clearly and affirmatively appears that such discretion has been abused or withheld." State v. Priest, 170 Vt. 576, 576 (1999) (mem.). Before revoking probation and imposing confinement following a probation violation, the court must find 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 or she is confined; or
> (3) It would unduly depreciate the seriousness of the violation if probation were not revoked.

28 V.S.A. § 303(b). "A court need not 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). In this case, the court found that defendant had not benefited from the probationary programs and had engaged in behavior "distressingly similar" to the behavior that had led to his conviction on the underlying charges, resulting in a continuing threat of harm to complainant. These findings would support any of the three factors cited above. Defendant's speculation that he could successfully be rehabilitated on probation with more rigorous conditions does not demonstrate that the district court abused its discretion in revoking probation and imposing the underlying sentence.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

_____
Marilyn S. Skoglund, Associate Justice

_____
Brian L. Burgess, Associate Justice