

NOT DESIGNATED FOR PUBLICATION

No. 120,278

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

ARVAY L. JEFFERSON JR.,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; JOHN J. KISNER JR., judge. Opinion filed April 19, 2019.
Affirmed.

Submitted for summary disposition under K.S.A. 2018 Supp. 21-6820(g) and (h).

Before ARNOLD-BURGER, C.J., MALONE and LEBEN, JJ.

PER CURIAM: Arvay L. Jefferson Jr. appeals the district court's decision revoking his probation and ordering him to serve his underlying prison sentence. We granted Jefferson's motion for summary disposition under Kansas Supreme Court Rule 7.041A (2019 Kan. S. Ct. R. 47). The State has responded and requests that the district court's judgment be affirmed.

On September 6, 2016, Jefferson pled guilty to one count of aggravated robbery. On October 20, 2016, the district court sentenced Jefferson to 61 months' imprisonment but granted a dispositional departure to probation for 36 months to be supervised by community corrections.

Jefferson's probation was unsuccessful. The record reflects that the district court imposed a three-day jail sanction on April 7, 2017, and the district court imposed a 120-day prison sanction with the Kansas Department of Corrections (KDOC) on December 14, 2017, based on Jefferson's violations of the conditions of his probation.

At a hearing on August 21, 2018, Jefferson admitted to violating the conditions of his probation on several grounds, including failing to pay program fees as directed and failing to follow the rules of his residential placement center. The district court revoked Jefferson's probation and ordered him to serve his underlying prison sentence. Jefferson timely appealed.

On appeal, Jefferson claims the district court "erred by revoking probation and ordering service of the underlying prison term without first imposing the 180-day intermediate sanction set forth in K.S.A. 22-3716." Jefferson acknowledges that under K.S.A. 2018 Supp. 22-3716(c)(9)(B), the district court did not have to consider additional intermediate sanctions in his case because his probation was originally granted as the result of a dispositional departure.

The procedure for revoking a defendant's probation is governed by K.S.A. 2018 Supp. 22-3716. Generally, once there has been evidence of a violation of the conditions of probation, the decision to revoke probation rests in the district court's sound discretion. *State v. Gumfory*, 281 Kan. 1168, 1170, 135 P.3d 1191 (2006). An abuse of discretion occurs when judicial action is arbitrary, fanciful, or unreasonable; is based on an error of law; or is based on an error of fact. *State v. Mosher*, 299 Kan. 1, 3, 319 P.3d 1253 (2014). The party asserting the district court abused its discretion bears the burden of showing such an abuse of discretion. *State v. Stafford*, 296 Kan. 25, 45, 290 P.3d 562 (2012). A district court abuses its discretion by committing an error of law in the application of K.S.A. 2018 Supp. 22-3716 when revoking a defendant's probation. See *State v. Still*, No. 112,928, 2015 WL 4588297, at *1 (Kan. App. 2015) (unpublished opinion).

Contrary to Jefferson's claim, the district court did not have to impose a 180-day intermediate sanction with the KDOC for two reasons. First, under K.S.A. 2018 Supp. 22-3716(c)(1)(E), a district court must impose either a 120-day KDOC sanction *or* a 180-day KDOC sanction, but not both, before revoking an offender's probation. Second, as Jefferson admits, the district court did not have to impose any intermediate sanctions in his case because he received a dispositional departure to probation.

Here, the district court gave Jefferson many chances to succeed on probation, but he failed at every turn. Based on the record, the district court's decision to revoke Jefferson's probation was not arbitrary, fanciful, or unreasonable, and it was not based on an error fact or law. Jefferson has failed to show the district court abused its discretion by revoking his probation and ordering him to serve his underlying prison sentence.

Affirmed.