

NOT DESIGNATED FOR PUBLICATION

No. 121,123

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

JONAH MUENCH,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Lyon District Court; MERLIN G. WHEELER, judge. Opinion filed December 6, 2019.  
Affirmed.

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

Before ARNOLD-BURGER, C.J., PIERRON and STANDRIDGE, JJ.

PER CURIAM: Jonah Muench appeals the district court's decision revoking his probation and ordering him to serve his underlying prison sentence. We granted Muench's motion for summary disposition under Kansas Supreme Court Rule 7.041A (2019 Kan. S. Ct. R. 47). Finding no error, we affirm the district court.

Pursuant to a plea agreement, Muench pled no contest to two counts of criminal use of a financial card. The district court sentenced Muench to 14 months in prison but released him on probation for a term of 12 months.

Over the course of the next 18 months, the district court found Muench violated various conditions of his probation on six separate occasions, resulting in sanctions

ranging from 2 days to 180 days. Finally, on April 16, 2019, the district court found Muench violated the conditions of his probation for a seventh time. Those violations included his failure to submit a urinary analysis as directed, his failure to obtain employment, and lying to his court services officer. Muench asked for another sanction. After noting that the previous six sanctions had not resulted in any type of behavior change, the district court denied that request and ordered him to serve his prison sentence.

On appeal, Muench argues that the district court abused its discretion when it revoked his probation rather than impose an intermediate sanction or order inpatient treatment. 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).

In this case, the district court revoked Muench's probation and imposed his underlying prison sentence after previously imposing intermediate sanctions on six different occasions. As noted above, when there is evidence of probation violation, the decision to revoke rests in the district court's sound discretion. *Gumfory*, 281 Kan. at 1170. Based on the facts presented and the applicable law, there is no evidence to show that the district court's decision to revoke Muench's probation was either arbitrary, fanciful, or unreasonable or based on an error of fact or law. See *Mosher*, 299 Kan. at 3; *Gumfory*, 281 Kan. at 1170. As such, we find that the district court did not abuse its discretion when it revoked Muench's probation and ordered him to serve his underlying prison sentence.

Affirmed.