

NOT DESIGNATED FOR PUBLICATION

No. 125,409

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

GARY EUGENE JONTRA,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; BRUCE C. BROWN, judge. Opinion filed September 8, 2023. Affirmed.

Emily Brandt, of Kansas Appellate Defender Office, for appellant.

Julie A. Koon, assistant district attorney, *Marc Bennett*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before SCHROEDER, P.J., MALONE, J., and MARY E. CHRISTOPHER, S.J.

PER CURIAM: Gary E. Jontra appeals from the district court's order revoking his probation and ordering him to serve an underlying 53-month prison sentence. Jontra claims that the district court abused its discretion by not granting leniency considering Jontra's circumstances. The State disagrees and responds that previously the district court had gratuitously granted leniency in the form of a dispositional departure sentence and intermediate sanctions, so after Jontra admitted to repeated probation violations, the district court did not abuse its discretion by revoking Jontra's probation. For reasons that will be explained below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On October 25, 2017, Jontra pleaded guilty to one count of failing to register under the Kansas Offender Registration Act (KORA), K.S.A. 22-4901 et seq. Jontra was granted a downward dispositional departure sentence of 36 months' probation with an underlying prison term of 53 months. The district court granted the dispositional departure because Jontra had accepted responsibility, had a dated criminal history, had mental health issues, and because community programs that would better support reformation were available to him.

Although Jontra was sentenced in 2018, his probation did not begin until May 2021 after his release from prison on unrelated charges. On December 28, 2021, a warrant was issued for Jontra's arrest for probation violations including testing positive for methamphetamine, the failure to attend drug and alcohol treatment, the failure to complete a mental health assessment, and for making no payments on his court costs.

The district court held a probation violation hearing on February 22, 2022. After hearing evidence, the district court found Jontra had tested positive for methamphetamine and had not submitted proof of completing a mental health evaluation—the first and third allegations listed in the warrant. The district court imposed intermediate sanctions under K.S.A. 2022 Supp. 22-3716(c) by modifying the terms of Jontra's probation, extending his probation, and ordering Jontra to serve up to 60 days in the county jail.

On May 10, 2022, Jontra filed a waiver of his rights to a court hearing and counsel and a consent to serve a 72-hour jail sanction. Therein, Jontra acknowledged that on April 25, 2022, he committed the new offenses of driving while on a suspended license and without proof of insurance, having switched tags, and committing a vehicle registration violation.

Six days later, on May 16, a warrant was issued for Jontra's arrest alleging: (1) he had tested positive for amphetamines on May 9; (2) on May 9 he admitted to driving without a license; (3) on May 13 he did not start his 72-day jail sanction; (4) on May 11 he failed to meet his probation officer as scheduled; and (5) on May 16 he failed to report to his probation officer as scheduled.

The district held a probation violation hearing on the new allegations on June 9, 2022. At the hearing, and after it had questioned Jontra, the district court found that Jontra had "freely, voluntarily, knowingly, [and] intelligently waived his rights to an evidentiary hearing." Jontra then admitted to each of the allegations in the May 16 warrant. Jontra stated that he had a falling out with his uncle, which resulted in a relapse and the inability to "get back on track." The district court then recounted how Jontra had a long criminal history and had failed to attend urinalysis tests or seek help for narcotics abuse, even when relevant services were within walking distance or where transportation assistance was offered. The district court concluded that it had imposed several sanctions and "tried multiple interventions" to no avail. The district court revoked Jontra's probation and imposed the underlying 53-month prison term.

Jontra timely appeals.

ANALYSIS

Jontra's sole point on appeal is that the district court abused its discretion in revoking his probation and ordering him to serve his underlying prison term. Jontra argues the district court could have granted more leniency and that it abused its discretion by not doing so. The State responds that Jontra squandered the district court's leniency by continuing to violate his probation even after being granted a downward dispositional departure sentence and two intermediate sanctions. The State maintains the district court did not abuse its discretion by revoking Jontra's probation after repeated violations. We

agree.

Probation is an act of judicial leniency afforded a defendant as a privilege rather than a right. *State v. Gary*, 282 Kan. 232, 237, 144 P.3d 634 (2006). But once probation is bestowed on a defendant, the defendant has a liberty interest in remaining on probation and may only have it revoked if the defendant violates conditions of probation. *State v. Hurley*, 303 Kan. 575, 581, 363 P.3d 1095 (2016). Once a probation violation and an exception to the intermediate sanctions requirement are established, the district court has discretion in determining whether to continue the probation or to revoke and require the defendant to serve the underlying prison sentence. *State v. Brown*, 51 Kan. App. 2d 876, 879-80, 357 P.3d 296 (2015), *rev. denied* 304 Kan. 1018 (2016). Under K.S.A. 2022 Supp. 22-3716(c)(7)(B), the district court may revoke probation without first imposing intermediate sanctions if the nonprison sanction was originally imposed through a dispositional departure.

Under these rules, we review the district court's revocation of Jontra's probation for an abuse of discretion. See 51 Kan. App. 2d at 879-80. A judicial action constitutes an abuse of discretion if (1) it is arbitrary, fanciful, or unreasonable; (2) it is based on an error of law; or (3) it is based on an error of fact. *State v. Levy*, 313 Kan. 232, 237, 485 P.3d 605 (2021).

Jontra acknowledges in his brief that because he was granted probation through a dispositional departure sentence, the district court could have revoked his probation without first imposing intermediate sanctions. Despite this, Jontra contends the district court abused its discretion because "[w]ithin a month of being revoked, [he] could have been at in-patient treatment, instead, he is serving over four years in prison for a status crime."

Jontra ignores the fact he was given multiple opportunities to remain on probation and the opportunity to seek treatment, yet he refused to do so. At the probation revocation hearing, Jontra blamed transportation issues as a cause for his inability to seek narcotics treatment, but, as the district court pointed out, he did not attempt to use free services available to him within walking distance or to avail himself where transportation would be provided. When Jontra was asked when he had last attended a 12-step meeting, he responded, "I don't even know where they're at. I don't even know where to look."

The district court had granted Jontra leniency multiple times when it was not required to, and Jontra had squandered that leniency each time. First, the district court granted Jontra probation on a downward dispositional departure, which he violated by testing positive for methamphetamine and failing to complete a mental health evaluation. Even though it could have revoked Jontra's probation for those violations alone, the district court imposed intermediate sanctions, which Jontra again violated in short order. Yet again, the district court imposed an intermediate sanction when it could have revoked Jontra's probation. Jontra then violated his probation a third time with a positive amphetamine urinalysis test and for failing to meet various conditions of his probation. In sum, the court granted leniency to Jontra well beyond what it was required to do. Regardless of the district court's leniency, Jontra failed to reform his conduct.

Jontra also argues the district court abused its discretion by listing a new crime as a reason for revoking his probation because the district court acknowledged at the revocation hearing that it would not consider the allegation that Jontra drove without a license. Jontra cites no legal authority in support of his position.

Even if the district court erroneously marked that it was revoking Jontra's probation because he committed a new crime, such error was harmless as to the ultimate result. Jontra does not take into account that the record shows the district court also revoked his probation for testing positive for amphetamines, for failing to start his 72-

hour jail sentence, and for failing to meet with and report to his probation officer as scheduled. See *State v. Volle*, No. 115,354, 2016 WL 7429457, at *4 (Kan. App. 2016) (unpublished opinion) (acknowledging that harmless error applies to probation revocation proceedings and finding an error harmless where other factual findings supported the result), *rev. denied* 306 Kan. 1330 (2017). Jontra attempts to explain why he violated his probation repeatedly, but he does not contest that these violations occurred. Under these circumstances, the district court did not abuse its discretion when it revoked Jontra's probation and ordered him to serve his underlying prison term.

Affirmed.