

NOT DESIGNATED FOR PUBLICATION

No. 125,559

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

XAVIER L. LACY,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Sedgwick District Court; ERIC WILLIAMS, judge. Opinion filed April 21, 2023.  
Affirmed.

Submitted by the parties for summary disposition under K.S.A. 2022 Supp. 21-6820(g) and (h).

Before MALONE, P.J., GREEN and CLINE, JJ.

PER CURIAM: After Xavier L. Lacy pleaded guilty to one count of felony offender registration violation, the district court granted his dispositional departure request and sentenced him to 38 months' imprisonment but suspended the sentence and imposed 24 months of probation.

Lacy later stipulated to violating the conditions of his probation, and the district court revoked his probation and ordered him to serve his original sentence. We granted Lacy's motion for summary disposition in lieu of briefs under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). Based on our review of the record, we do not find that the district court abused its discretion in revoking Lacy's probation. Thus, we affirm.

In January 2020, the State charged Lacy with two counts of felony offender registration violation for crimes that were alleged to have occurred in January 2020. Lacy later pleaded guilty to a single count of offender registration violation. In exchange for his plea, the State agreed to recommend a dispositional departure.

The district court agreed to grant the dispositional departure and imposed 24 months of probation with an underlying 38-month prison sentence. The State later moved to revoke Lacy's probation after alleging that four of his urinalysis tests were determined to be positive for THC or alcohol. In response, Lacy argued that his addictions would be better served through inpatient treatment and that revocation was not the best option.

The district court revoked his probation and ordered him to serve his underlying sentence.

In his motion for summary disposition, Lacy argues that the district court erred by revoking his probation. But he acknowledges that the district court had discretion to revoke his probation, without imposing intermediate sanctions, because he violated the terms of his probation when his probation was a result of a dispositional departure. See K.S.A. 2022 Supp. 22-3716(c)(7)(B) (authorizing revocation without intermediate sanctions when the probation term was originally granted because of a dispositional departure); *State v. Tafolla*, 315 Kan. 324, 328, 508 P.3d 351 (2022) (once probation violation is established the district court has discretion to revoke probation unless otherwise limited by statute).

Because the district court was statutorily authorized to revoke Lacy's probation, the decision to revoke his probation rested in the sound discretion of the district court. 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). Lacy bears the burden of proving that

the district court abused its discretion. See *State v. Crosby*, 312 Kan. 630, 635, 479 P.3d 167 (2021).

Before revoking Lacy's probation, the district court noted that Lacy had several opportunities to avail himself of drug and alcohol treatment but that he consistently missed appointments and instead went just often "enough that he will not be discharged unsuccessfully." Thus, the district court reasoned that Lacy was not amenable to probation and revoked his probation. Lacy has failed to show that the district court abused its discretion.

Affirmed.