

NOT DESIGNATED FOR PUBLICATION

No. 125,599

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

CHRISTOPHER S. LOVELETTE,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; CHRISTOPHER M. MAGANA, judge. Submitted without oral argument. Opinion filed October 6, 2023. Affirmed.

Michelle A. Davis, of Kansas Appellate Defender Office, for appellant.

Lance J. Gillett, assistant district attorney, *Marc Bennett*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

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

PER CURIAM: Christopher S. Lovelette appeals the district court's decision to revoke his probation and impose his underlying prison sentence because he committed new crimes while on probation. We find no error and affirm the district court's decision.

FACTS

Lovelette pled guilty, pursuant to a plea agreement, to aggravated battery of his girlfriend. The district court ordered Lovelette to serve 24 months' probation with a suspended 24-month prison sentence.

Less than six months into his probation term, the State issued a warrant to arrest Lovelette for violating the terms of his probation. He was charged with committing new crimes—criminal possession of a firearm and driving while his license was suspended/revoked/cancelled—and failing to abide by his curfew restriction and gang conditions while on probation. About a month later, the State issued a second warrant, charging Lovelette with the commission of two more crimes—possession of drug paraphernalia and transporting an open container—along with failing to: (1) refrain from alcohol use; (2) report to his probation officer; (3) abide by his curfew restriction; and (4) enroll in or attend the Batterer's Intervention Program, as recommended by his domestic violence offender assessment.

The district court held an evidentiary hearing on the allegations in both warrants. At that hearing, the State introduced a certified copy of municipal court records which established Lovelette pleaded guilty to the drug paraphernalia charge in exchange for dismissing the open container charge. The district court also heard evidence from several witnesses about the rest of the alleged probation violations in the two warrants.

While the district court did not find Lovelette committed the new crime of transporting an open container (since that charge was ultimately dismissed), it did find he violated the terms of his probation by possessing alcohol. It also found Lovelette violated his probation by committing each of the other violations alleged in the two warrants. Based on Lovelette's commission of three new crimes while on probation (possession of drug paraphernalia, driving while suspended, and possession of a firearm by a convicted

felon), the district court revoked Lovelette's probation under K.S.A. 2022 Supp. 22-3716 and did not impose any intermediate sanctions.

ANALYSIS

Lovelette argues the district court abused its discretion by revoking his probation and imposing his underlying sentence. He claims no legal or factual error on appeal—he simply argues the court's decision was unreasonable. He maintains that he should have been assigned to more rigorous probation through community corrections instead.

Judicial discretion is abused when judicial action is arbitrary, fanciful, or unreasonable, which is another way to say that discretion is abused only where no reasonable person would take the view adopted by the trial court. *Hill v. Farm Bur. Mut. Ins. Co.*, 263 Kan. 703, 704, 952 P.2d 1286 (1998). Lovelette bears the burden of demonstrating an abuse of discretion by the district court. See *State v. Thomas*, 307 Kan. 733, 739, 415 P.3d 430 (2018).

Using this standard, we do not find the district court's revocation of Lovelette's probation was unreasonable. While Lovelette maintains there was insufficient evidence to support the new crime of possession of a firearm (since he denies owning the gun found in the car he was driving), he does not contest the court's finding that he committed the other two new crimes—possession of drug paraphernalia and driving while suspended. The district court had the legal authority and discretion to impose Lovelette's underlying sentence rather than order "more significant, rigorous monitoring" because Lovelette committed new crimes under K.S.A. 2022 Supp. 22-3716(c)(7)(C). And we do not find it abused its discretion in doing so.

Affirmed.