

NOT DESIGNATED FOR PUBLICATION

Nos. 125,698
125,699

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

MARCO D. LAWYER,
Appellant.

MEMORANDUM OPINION

Appeal from Johnson District Court; MICHAEL P. JOYCE, judge. Opinion filed December 8, 2023.
Affirmed.

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

Before HILL, P.J., MALONE and ATCHESON, JJ.

PER CURIAM: In this consolidated appeal, Marco D. Lawyer argues that the district court abused its discretion when it revoked his probation and ordered him to serve his prison sentences in two Johnson County cases, Nos. 21CR1527 and 21CR1776. We granted his motion for summary disposition under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). Because Lawyer cannot prove that the district court abused its discretion by revoking his probation, we affirm.

CASE HISTORY

In November 2021, Marco D. Lawyer and the State entered into a plea agreement involving Lawyer's pending criminal cases in Johnson County. Under this agreement, Lawyer pleaded guilty to aggravated assault and theft in 21CR1527 and pleaded guilty to identity theft in 21CR1776. In exchange for his guilty pleas, the State agreed to do the following: (1) dismiss Lawyer's remaining charges in 21CR1527; (2) dismiss Lawyer's other pending criminal cases in Johnson County; and (3) support Lawyer's motion to sentence him to probation in 21CR1527 and 21CR1776. The State's support of Lawyer's forthcoming dispositional departure motion was important because in 21CR1527, Lawyer's presumptive sentence was prison because he committed the crimes on felony supervision and with a firearm.

At Lawyer's joint plea hearing in November 2021, the parties explained the terms of the plea agreement on the record. Afterwards, Lawyer pleaded guilty to aggravated assault and theft in 21CR1527 and pleaded guilty to identity theft in 21CR1776.

Before his sentencing, Lawyer moved for a dispositional departure. In his motion, Lawyer argued the district court should sentence him to probation instead of prison because the State supported his motion and he had accepted responsibility for his criminal conduct.

At Lawyer's sentencing hearing in December 2021, the district court granted Lawyer's dispositional departure motion. For his aggravated assault conviction in 21CR1527, the district court ordered Lawyer to serve an 18-month prison sentence, followed by 12 months' probation, and then 12 months' postrelease supervision. For his theft conviction in 21CR1527, the district court ordered Lawyer to serve a concurrent term of 18 months' probation with an underlying 6-month prison sentence followed by 12

months' postrelease supervision. As for Lawyer's identity theft conviction in 21CR1776, the district court sentenced Lawyer to an 18-month prison sentence, 18 months' probation, and 12 months' postrelease supervision. Moreover, it ordered Lawyer to serve his sentence in 21CR1776 consecutive to his sentence in 21CR1527.

In both cases, Lawyer's probation conditions required him to follow all laws. Then, in early April 2022, the district court issued bench warrants for Lawyer's arrest in both 21CR1527 and 21CR1776. Two days before the district court issued the bench warrants, law enforcement officers had arrested Lawyer for several crimes in Missouri. Specifically, in addition to two counts of child endangerment, Missouri law enforcement arrested and then charged Lawyer with one count each of unlawful possession of a firearm, forgery, receiving stolen property, and resisting arrest. Also, since starting probation in December 2021, the State had charged Lawyer with committing a new misdemeanor domestic battery in Johnson County, Kansas.

In September 2022, the district court held a hearing during which the State moved to revoke Lawyer's probation in 21CR1527 and 21CR1776. The State argued that the district court should revoke Lawyer's probation because he had committed new crimes. In doing so, the prosecutor updated the district court on Lawyer's new Missouri charges. She explained that although three of Lawyer's Missouri charges had been dismissed, Lawyer had been convicted of resisting arrest—a felony—and was currently serving a three-year prison sentence for that crime. As for Lawyer's misdemeanor domestic battery charge, the prosecutor explained that this case was still pending.

Lawyer never challenged the State's probation violation allegations. Instead, he stipulated to violating his probation condition to follow all laws in both 21CR1527 and 21CR1776. Still, Lawyer argued that the district court should not revoke his probation for the following reasons: (1) because he had not violated the conditions of his probation before committing the new crimes; (2) because he had kept consistent employment; (3)

because he had made personal improvements on probation; (4) because he wanted the opportunity to make more personal improvements on probation; (5) because his youth supported his ability to make more personal improvements; and (6) because he wanted the opportunity to raise his children.

But the district court rejected Lawyer's arguments. It found that Lawyer's commission of new crimes while on probation supported the revocation of his probation in 21CR1527 and 21CR1776. Then, the district court denied Lawyer's motion to modify his original prison sentences from consecutive to concurrent. So, Lawyer's underlying controlling prison sentences in both 21CR1527 and 21CR1776 was 18 months. In turn, for both 21CR1527 and 21CR1776, the district court sentenced Lawyer to a total controlling 36-month prison sentence by imposing his original consecutive prison sentences.

The district court properly revoked Lawyer's probation.

When considering a defendant's argument that the district court wrongly revoked his or her probation, we review the district court's decision for an abuse of discretion. *State v. Tafolla*, 315 Kan. 324, 328, 508 P.3d 351 (2022). A district court abuses its discretion whenever it makes an error of law, an error of fact, or an otherwise unreasonable decision. 315 Kan. at 328.

Lawyer seemingly argues that under the facts of his case, the district court acted unreasonably by revoking his probation in 21CR1527 and 21CR1776. Lawyer also complains about the district court's refusal "to modify the overall sentence to concurrent prison terms in the two cases instead of consecutive."

But Lawyer's arguments ignore that he stipulated to violating his probation in 21CR1527 and 21CR1776 by resisting arrest, a felony crime in Missouri. At his

probation violation hearing, Lawyer argued that the district court should not revoke his probation in 21CR1527 or 21CR1776 because some of his Missouri charges had been dismissed. Yet, in making this argument, Lawyer explicitly admitted that he had been convicted of felony resisting arrest in Missouri while on probation.

It is a well-known rule that "[o]nce a probation violation has been established, the district court's decision to revoke the offender's probation and impose the original sentence is discretionary unless otherwise limited by statute." *Tafolla*, 315 Kan. at 328. In this case, Lawyer had a probation condition in 21CR1527 and 21CR1776 to follow all laws. Because Lawyer admitted that he committed a new felony while on probation contrary to this probation condition, it follows that the district court's revocation of Lawyer's probation in 21CR1527 and 21CR1776 was entirely reasonable. For this same reason, it follows that the district court did not abuse its discretion when it denied Lawyer's motion to modify his original underlying prison sentences in 21CR1527 and 21CR1776 to run concurrent instead of consecutive. Indeed, K.S.A. 2022 Supp. 22-3716(c)(7)(C) establishes the reasonableness and legality of the district court's decision. It provides that a district court may immediately revoke a defendant's probation without imposing any previous sanction on that defendant if he or she "commit[ted] a new felony or misdemeanor while the offender is on probation"

We find no reason to reverse the district court's ruling.

Affirmed.