

NOT DESIGNATED FOR PUBLICATION

No. 125,825

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

HECTOR MARRUFO-GONZALEZ,
Appellant.

MEMORANDUM OPINION

Appeal from Wyandotte District Court; AARON T. ROBERTS, judge. Opinion filed July 14, 2023.
Affirmed.

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

Before ARNOLD-BURGER, C.J., MALONE and SCHROEDER, JJ.

PER CURIAM: Hector Marrufo-Gonzalez timely appeals the district court's revocation of his probation and the imposition of his underlying prison sentence. We granted Marrufo-Gonzalez' motion for summary disposition in lieu of briefs under Kansas Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). The State did not respond. We observe no abuse of discretion, and we affirm.

On April 17, 2018, Marrufo-Gonzalez pled guilty to one count of possession of marijuana with the intent to distribute for acts committed in August 2017. As part of his plea agreement, the State agreed to recommend a dispositional departure to supervised probation. At Marrufo-Gonzalez' sentencing on September 18, 2018, the district court

sentenced Marrufo-Gonzalez to 116 months' imprisonment and then granted a dispositional departure to 36 months' supervised probation.

Probation did not go well. At Marrufo-Gonzalez' first probation revocation hearing in April 2019, he stipulated to the probation violations because he left the state for work and failed to complete the remaining requirements of his probation. The district court, upon revoking his probation, ordered a 14-day jail sanction, allowed time served, and reinstated Marrufo-Gonzalez' supervised probation.

Three months later, the State filed another motion to revoke probation. At the probation revocation hearing held in September 2019, Marrufo-Gonzalez stipulated to those probation violations. The district court revoked Marrufo-Gonzalez' probation and imposed the underlying sentence of 116 months' imprisonment.

Marrufo-Gonzalez now argues the district court abused its discretion. He specifically argues the district court unreasonably revoked his probation, considering the nature of his violations, his renewed commitment to succeed, and his family support.

When a probation violation has been established, the decision to revoke is within the sound discretion of the district court, unless limited by statute. *State v. Tafolla*, 315 Kan. 324, 328, 508 P.3d 351 (2022). To find an abuse of discretion, that judicial action must be deemed (1) arbitrary, fanciful, or unreasonable; (2) based on an error of law; or (3) based on an error of fact. *State v. Ingham*, 308 Kan. 1466, 1469, 430 P.3d 931 (2018). Marrufo-Gonzalez bears the burden to establish such abuse of discretion. See *State v. Thomas*, 307 Kan. 733, 739, 415 P.3d 430 (2018).

At the time the district court revoked Marrufo-Gonzalez' probation, he had received one prior sanction and continued to violate the conditions of his probation. Because Marrufo-Gonzalez' crime of conviction was committed after July 1, 2017, the

district court could revoke probation without imposing intermediate sanctions because probation "was originally granted as the result of a dispositional departure." K.S.A. 2017 Supp. 22-3716(c)(9)(B); see *State v. Coleman*, 311 Kan. 332, 337, 460 P.3d 828 (2020) (K.S.A. 2017 Supp. 22-3716[c][9][B] applies to probationers who committed offenses after July 1, 2017).

Marrufo-Gonzalez offers no real support for his claim the district court abused its discretion by unreasonably revoking his probation at the conclusion of his second revocation hearing. He alleges no error of fact or law, and we are unpersuaded that no reasonable person would have agreed with the district court's decision.

Affirmed.