

NOT DESIGNATED FOR PUBLICATION

No. 125,900

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

WYATT SAMUEL BENNETT,
Appellant.

MEMORANDUM OPINION

Appeal from Lyon District Court; W. LEE FOWLER, judge. Opinion filed August 4, 2023.
Affirmed.

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

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

PER CURIAM: After finding Wyatt Samuel Bennett violated his probation by failing to abide by the conditions of his probation and by committing a new crime, the district court revoked his probation and imposed his underlying sentence. Bennett appeals. We granted Bennett's motion for summary disposition under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). The State did not respond. Finding no error, we affirm.

FACTUAL AND PROCEDURAL HISTORY

Under a plea agreement, Bennett pled no contest to two counts of attempted aggravated indecent liberties with a child. The district court accepted Bennett's pleas and

found him guilty of those crimes. The district court sentenced Bennett under the plea agreement—ordering his two, 18 months' imprisonment terms to run consecutive but granting 24 months' probation. Among other conditions to his probation, Bennett agreed to not violate the law, to not contact any minor children during his probation period, to report incidental contact with children, and to obtain approval before using social media. He was also prohibited from possessing or viewing material related to his crime or deleting such materials from his computer.

About three months after sentencing, the district court issued a bench warrant for Bennett's arrest after a 16-year-old female from Colorado reported Bennett to the Emporia Police Department for soliciting nude pictures online. Bennett first denied knowing the minor female, but later admitted to having contact with her for the prior three days using Snapchat and other instant messaging. Bennett admitted receiving nude pictures of the minor and admitted to deleting the pictures from his phone—although he denied requesting the pictures. Bennett was arraigned and committed the same day the warrant was issued. He remained in county jail until his revocation hearing.

In an addendum to their motion to revoke Bennett's probation, an intensive supervision officer detailed 10 violations. At the revocation hearing, Bennett did not contest several violations, including: violating the law by failing to register his social media accounts under the Kansas Offender Registration Act (KORA), K.S.A. 22-4901 et seq., failing to be truthful with correctional officers when he first stated he did not know the minor, contacting a minor during his probation period, refusing to submit a polygraph examination, failing to disclose incidental contact with a minor, and failing to update his list of equipment to include his new cellphone. Bennett did not stipulate to the State's allegations that he requested or viewed nude photos of the minor, that he violated his computer agreement, or that he failed to obtain written approval for his social media accounts.

The district court accepted Bennett's stipulations and found he violated the terms of his probation. The district court heard arguments from the parties on the revocation disposition and ultimately revoked Bennett's probation and imposed his underlying sentences. The district court reasoned that Bennett violated the law while on probation, he was a public safety risk, and he was untruthful with his probation officer.

Bennett appeals.

ANALYSIS

After evidence of a probation violation is presented, the decision to reinstate probation or to revoke and incarcerate the probationer rests within the sound discretion of the district court. We review such a decision for any abuse of that discretion. See *State v. Skolaut*, 286 Kan. 219, 227-28, 182 P.3d 1231 (2008). A district court abuses its discretion if its action is arbitrary, fanciful, or unreasonable; or if it is based on an error of law or fact. *State v. Ingham*, 308 Kan. 1466, 1469, 430 P.3d 931 (2018). Bennett has the burden to show an abuse of discretion. See *State v. Thomas*, 307 Kan. 733, 739, 415 P.3d 430 (2018).

Under the probation revocation statute, a district court must first exhaust the required intermediate sanctions before revoking a defendant's probation, unless it finds that a statutory exception applies, allowing it to bypass the intermediate sanctions. K.S.A. 2019 Supp. 22-3716(c). Applicable here, the court need not impose intermediate sanctions if the district court finds the safety of the public will be jeopardized or when the defendant commits a new felony or misdemeanor while on probation. K.S.A. 2019 Supp. 22-3716(c)(7)(A), (c)(7)(C).

At the probation revocation hearing, the district court found Bennett violated the law by failing to register all social media accounts as required under KORA. The district

court also found Bennett was a public safety risk due to Bennett's failure to register his social media accounts and having contact with a minor female through those accounts. On appeal, Bennett does not challenge these findings or the stipulations supporting such findings. At the district court, he admitted violating KORA by failing to register his social media accounts. And he admitted to the facts the district court used to support its public safety finding—Bennett stipulated to having contact with a minor female, in violation of his probation terms, using various social media platforms that he did not disclose under KORA. As a result, the district court did not make an error of law or fact by revoking Bennett's probation under K.S.A. 2019 Supp. 22-3716(c)(7) and ordering him to serve his remaining prison sentence.

Because Bennett does not argue the district court committed an error of fact or law, the only remaining question is whether the district court's decision was arbitrary, fanciful, or unreasonable. Bennett argues the district court's decision was unreasonable because the record shows his contact with the minor was "pushed by the minor, not Wyatt," and he concludes that sexual offender treatment was a "better option" than imprisonment.

We find the district court's decision was reasonable. As it noted in its findings, Bennett's underlying crimes were for attempted aggravated indecent liberties with a child and the district court ordered Bennett to have no contact with minor females. But Bennett admitted being in contact with a minor female within the first 6 months of his 24-month probation term. He also admitted to using social media accounts, which he failed to register under KORA, to communicate with the minor female. Because we cannot find that no reasonable person would have taken the view adopted by the district court, we hold that the district court did not abuse its discretion.

Affirmed.