

NOT DESIGNATED FOR PUBLICATION

Nos. 126,013
126,014

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

PATRICK L. WATIE JR.,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; DAVID L. DAHL, judge. Opinion filed October 6, 2023.
Affirmed.

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

Before CLINE, P.J., WARNER and PICKERING, JJ.

PER CURIAM: Patrick L. Watie Jr. appeals the district court's revocation of his probation after he violated the terms of his probation. We granted his motion for summary disposition under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). Finding no reversible error of law or abuse of discretion, we affirm.

After Watie pled guilty to possession of cocaine in two cases, the district court granted his dispositional departure request and sentenced him to a controlling 32 months' imprisonment but suspended the sentences and imposed 12 months of probation. About halfway into his probationary term, the State issued a warrant for Watie's arrest for violating the terms of his probation.

The district court held an evidentiary hearing and found Watie committed two new crimes while on probation: aggravated assault and criminal possession of a firearm. It revoked his probation in both cases and imposed the underlying sentences.

On appeal, Watie acknowledges that the district court had the authority to revoke his probation without first imposing graduated sanctions. 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). Even so, Watie argues that the district court abused its discretion by unreasonably revoking his probation under the circumstances. Watie argues the court should have continued him on probation because he had no previous warrants alleging violation of his probation, he found employment, paid his fines, and sought drug and alcohol treatment while on probation.

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). Watie 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).

Watie does not dispute that he committed two new crimes while on probation. When revoking Watie's probation, the district court noted that both Watie's criminal history and the fact that his crime of conviction was a third or subsequent felony drug conviction placed him in the presumptive prison sentencing category. The court noted it had given him a chance by granting him a dispositional departure to probation. And it pointed out some of Watie's past convictions included several battery and firearms charges, including battery and assault on a law enforcement officer. The district court

noted Watie's new crimes were felonies and constituted threats to public safety, so under these circumstances, it felt revocation of Watie's probation was appropriate.

Watie fails to meet his burden to prove that the district court's decision was unreasonable under the circumstances. He was granted a dispositional departure to probation and while on probation committed two new crimes. The district court did not abuse its discretion in revoking Watie's probation and ordering him to serve his underlying sentences.

Affirmed.