

NOT DESIGNATED FOR PUBLICATION

No. 126,057

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

MIKE T. LOGAN,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; DAVID J. KAUFMAN, judge. Opinion filed December 15, 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: Mike T. Logan is appealing the district court's revocation of his probation. He argues that the district court abused its discretion by ordering him to serve a modified prison term rather than reinstating his probation. We granted Logan's motion for summary disposition under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). The State does not object to summary disposition but asks that we affirm the district court. After reviewing the record, we find no error and affirm.

FACTUAL AND PROCEDURAL HISTORY

Logan pled guilty to aggravated battery, a severity level 7 nondrug person felony, for an act he committed in January 2020 while on parole for other person felony crimes. With Logan's criminal history score of A, his presumptive prison term was 30 to 34 months. Logan moved for a downward dispositional departure to probation. The State opposed. The district court granted the motion and placed Logan on 24 months' probation with an underlying prison term of 32 months.

Later, Logan admitted violating the conditions of his probation by consuming alcohol and failing to timely notify his intensive supervision officer (ISO) of a change in his employment. The district court revoked Logan's probation and ordered him to serve a modified prison term of 22 months.

DISCUSSION

Standard of Review and Governing Law

Once a probation violation has been established, the district court has discretion to revoke probation and impose the underlying sentence unless otherwise limited by statute. *State v. Tafolla*, 315 Kan. 324, 328, 508 P.3d 351 (2022); *State v. Brown*, 51 Kan. App. 2d 876, Syl. ¶ 4, 357 P.3d 296 (2015), *rev. denied* 304 Kan. 1018 (2016) ("Once a probation violation has been established, whether to revoke the defendant's probation is a discretionary decision for the district court unless a statute specifically provides otherwise."). Appellate courts review "the propriety of the sanction for a probation violation imposed by the district court for an abuse of discretion." *Tafolla*, 315 Kan. at 328. "A court abuses its discretion if the judicial decision (1) is arbitrary, fanciful, or unreasonable; (2) is based on an error of law; (3) or is based on an error of fact." 315 Kan. at 328. Therefore, "[u]nless the district court has made a legal or factual error, an

appellate court may find an abuse of discretion only when no reasonable person would agree with the district court's decision." *Brown*, 51 Kan. App. 2d 876, Syl. ¶ 4. Logan bears the burden of establishing such abuse of discretion. See *Tafolla*, 315 Kan. at 328.

K.S.A. 2019 Supp. 22-3716(c)(1) generally requires imposing an intermediate sanction before the district court can revoke probation. But K.S.A. 2019 Supp. 22-3716(c)(7) enumerates four circumstances in which the district court may bypass the intermediate sanctioning scheme and revoke probation without having previously imposed an intermediate sanction under K.S.A. 2019 Supp. 22-3716(c)(1). Specifically, K.S.A. 2019 Supp. 22-3716(c)(7)(B) provides that the district court may revoke an offender's probation without having previously imposed an intermediate sanction if the probation was originally granted as the result of a dispositional departure. Moreover, "the dispositional departure statutory exception does not require particularized findings." *Tafolla*, 315 Kan. at 331. Rather, "[t]he plain language of this statutory subsection authorizes the district court to revoke an offender's probation without having previously imposed intermediate sanctions if the probation originally was granted as a result of a dispositional departure." *Tafolla*, 315 Kan. at 331.

Analysis

In his motion for summary disposition, Logan argues the district court abused its discretion by ordering him to serve a modified prison term rather than reinstating his probation:

"Mr. Logan's infractions were minor condition violations. He was afraid to tell his ISO that he had been fired from his job and made one error with alcohol. Even his ISO did not recommend revocation. Mr. Logan secured a new job, and he had stable and drug-free housing. He requested his probation be reinstated and extended 12 months. Given these facts, and the fact that it was Mr. Logan's first probation violation, the district court abused its discretion in revoking his probation."

We note that the district court was not statutorily required to impose an intermediate sanction because Logan's probation was originally granted as the result of a dispositional departure. K.S.A. 2019 Supp. 22-3716(c)(7)(B). Logan admitted the probation violations and does not claim the district court's revocation of his probation was based on a legal or factual error. Therefore, we can only reverse the district court's revocation of Logan's probation and imposition of the modified prison term if no reasonable person would agree with the district court's decision. See *Tafolla*, 315 Kan. at 328; *Brown*, 51 Kan. App. 2d 876, Syl. ¶ 4.

We cannot say that no reasonable person would agree with the district court's decision to revoke Logan's probation and impose the modified prison term. Despite the district court's act of grace in granting Logan the privilege of probation when he was facing a presumptive prison term of more than two years, Logan squandered the opportunity by violating the conditions of his probation in multiple ways. Moreover, the fact that Logan committed the underlying violent person felony while on parole for other person felonies as well as his extensive criminal history and repeated failure to reform his behavior furnish further bases on which a reasonable person could have agreed with the district court's decision to revoke Logan's probation and impose the modified prison term. Given the facts here, it was not unreasonable for the district court to conclude that reinstating Logan's probation would have been futile.

We affirm the district court's decision to revoke Logan's probation and order him to serve the modified prison term.

Affirmed.