

NOT DESIGNATED FOR PUBLICATION

No. 126,067

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

CANDICE M. WALKER,
Appellant.

MEMORANDUM OPINION

Appeal from Johnson District Court; THOMAS M. SUTHERLAND, 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: Candice M. Walker appeals the revocation of her probation. We granted Walker's motion for summary disposition under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). The State did not contest the summary disposition of the appeal. Finding no abuse of discretion by the district court, we affirm.

FACTUAL AND PROCEDURAL HISTORY

In October 2017, Walker pleaded no contest to forgery, identity theft, and mistreatment of a dependent adult. At sentencing, the district court imposed a prison

sentence of 12 months and granted probation for 24 months. It also ordered Walker to pay \$3,527.21 restitution.

The district court later extended Walker's probation three times after finding she violated probation conditions. In June 2018, the court found Walker tested positive for marijuana and changed her address without permission. It consequently extended her probation for 24 months and ordered a 3-day violation sanction. In December 2020, the court found Walker failed to pay restitution and extended her probation for 12 months. In April 2022, the court again found she failed to pay restitution and extended her probation for another 24 months.

In December 2022, the district court conducted a fourth probation violation hearing and the State called Andrea Sharp, a Johnson County probation officer, as its sole witness. Sharp testified that Walker failed to report, failed to make monthly payments towards court costs, tested positive for marijuana multiple times, and failed to complete community service requirements. She then recommended Walker serve the prison sentence:

"I believe the first revocation had marijuana as a violation, the second one was payments, the third one was payments, the fourth one we are on reporting, payments, and marijuana. So nothing is getting any better. We are at the same place we have been for the last four or five years. And that's all we have left for her. She doesn't seem to want to comply with probation, so the other option is that she just serve her sentence."

The district court agreed with Sharp and revoked Walker's probation, ordering her to serve the underlying prison sentence. Walker timely appeals.

ANALYSIS

On appeal, Walker argues the district court abused its discretion by revoking her probation. She argues its decision was unreasonable given her effort to comply with the conditions of her probation. Walker likewise asserts that serving a prison sentence would also jeopardize her ability to make payments toward court costs and restitution.

In revoking probation, a district court first makes a factual determination that the offender has violated a condition of probation and the State must prove such a violation by a preponderance of the evidence. Appellate courts review these factual findings for substantial competent evidence. *State v. Inkelaar*, 38 Kan. App. 2d 312, 315, 164 P.3d 844 (2007). "Substantial competent evidence" possesses both relevance and substance. *In re J.M.E.*, 38 Kan. App. 2d 229, 232, 162 P.3d 835 (2007). Once a violation has been established, the district court may revoke probation in its sound discretion. *State v. Gumfory*, 281 Kan. 1168 Syl. ¶ 1, 135 P.3d 1191 (2006).

Here, the district court based its revocation of Walker's probation on her failure to report, failure to make monthly payments towards court costs, UA failures, and failure to complete community service requirements. These findings were made following a probation violation hearing at which a Johnson County probation officer testified. In reaching this conclusion, the court noted that the "evidence [was] essentially uncontested and uncontroverted." And indeed, Walker failed to rebut the State's evidence. As a result, the court's factual findings are supported by substantial competent evidence.

Was this an abuse of discretion? To find an abuse of discretion, the judicial action must be considered arbitrary, fanciful, or unreasonable or be based on an error of law or error of fact. *State v. Levy*, 313 Kan. 232, 237, 485 P.3d 605 (2021). Walker bears the burden to show an abuse of discretion. See *State v. Crosby*, 312 Kan. 630, 635, 479 P.3d

167 (2021). And because she does not argue the district court made an error of fact or law, we only consider whether the court's action was unreasonable.

Walker emphasizes on appeal that the nature of her violations were mild. While this may be true, such an assertion fails to show how the district court was unreasonable. Furthermore, even if mild, Walker's violations were persistent. And she also asserts that a prison sentence jeopardizes her ability to make payments. Of course, this notion is hardly contested. But again, this fails to establish an abuse of discretion.

At the hearing, the district court noted how unamenable Walker was to probation. It had imposed an intermediate jail sanction which "did not appear to work." Indeed, the court stressed that "it is not simply about making payments. It is about the fact that [Walker] continues to commit a crime consuming marijuana." Walker violated the conditions of her probation several times, and she fails to explain how this does not warrant probation revocation. Thus, the district court was reasonable and it did not abuse its discretion in revoking her probation.

Affirmed.