

NOT DESIGNATED FOR PUBLICATION

No. 126,154

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

JORDON M. JONES,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; ERIC WILLIAMS, judge. Submitted without oral argument.
Opinion filed June 7, 2024. Affirmed.

Darby VanHoutan, of Kansas Appellate Defender Office, for appellant.

Kristi D. Allen, assistant district attorney, *Marc Bennett*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before BRUNS, P.J., HILL, J., and MARY E. CHRISTOPHER, S.J.

PER CURIAM: In this probation revocation appeal, Jordon M. Jones argues that the district court abused its discretion and sent him to prison rather than place him on probation. While the court could have returned Jones to probation after committing another felony crime while on probation for a felony, it did not. The court had good reasons for sending Jones to prison, and we will not disturb its sentence on appeal.

A crime with a weapon is followed by a second crime with a weapon.

In June 2020, Jones pled no contest to criminal possession of a weapon by a felon, a severity level 8 felony, and possession of marijuana, a class B misdemeanor, in case No. 20CR58. Those crimes occurred in January 2020. The district court sentenced him to eight months in prison for the felony and a consecutive six-month jail sentence for the misdemeanor. The court then placed Jones on probation for 18 months, the presumptive disposition.

In April 2021, the State alleged that Jones violated the conditions of his probation by failing to report to his probation officer as directed and failing to make payment towards his court costs and fees as directed. Jones stipulated to the violations. The district court ordered a two-day jail sanction and reinstated Jones' probation for 18 months.

In March 2022, the State alleged Jones violated the conditions of his probation by failing to report to his probation officer as directed on four occasions; committing the offense of employee embezzlement as alleged in a Wichita Police Department incident report; failing to complete community service work as directed; failing to maintain full-time employment as directed; failing to pay court costs as directed; and leaving the state without permission.

In January 2023, Jones pled guilty to criminal possession of a weapon by a felon. Before entering that plea, he was told that if he was found guilty of possession of a weapon, that would constitute a violation of his probation. Even so, he pled guilty, and the district court accepted his guilty plea. The district court then found that he had also violated his probation because he had committed a new crime. Jones admitted to the allegations in the March 2022 warrant except for the embezzlement charge. The State withdrew that allegation.

Jones later argued that the court should reinstate his probation because his crime was nonviolent. He stated that he merely possessed a firearm at a shooting range; he was a young man who had the ability to work and do community service if put back on probation; and he was dedicated to improving himself as shown by his voluntary engagement in drug treatment.

Mulling this over, the district court noted that Jones committed the same crime in 2021 that he had committed in 2020. He had a history of unlawful firearm use. The court revoked Jones' probation and ordered him to serve his original sentence. Jones asked the court to modify the sentence by serving the two concurrently instead of consecutively. The court denied the request because Jones had committed a new felony offense.

To us, Jones does not contest that the district court had the legal authority to revoke his probation and impose his prison sentence. Instead he argues that no reasonable person would have taken the view adopted by the district court because he could participate in substance abuse treatment programs in the community. In his view, he did not pose a high risk to the community because neither prosecution involved him actively using a firearm for a criminal purpose. In mitigation he contended that he was young; he had a lack of any real criminal history; his crimes were nonviolent; and he had a history of participating in community-based rehabilitation programs. He also contends that the district court should have at least modified his sentence to allow him quicker access to those community programs.

Once a probation violation is established, a district court has discretion to revoke probation and impose the original sentence unless the court is otherwise limited by statute. *State v. Tafolla*, 315 Kan. 324, 328, 508 P.3d 351 (2022). See K.S.A. 22-3716(b) and (c) (requiring graduated sanctions before revocation in certain circumstances). The district court also has discretion to modify the original sentence and require the offender

to serve a lesser sentence under K.S.A. 22-3716(c)(1)(C). See *State v. Reeves*, 54 Kan. App. 2d 644, 648, 403 P.3d 655 (2017).

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. Bilbrey*, 317 Kan. 57, 63, 523 P.3d 1078 (2023).

Beginning July 1, 2019, a district court could revoke an offender's probation after the offender has received at least one two-day or three-day jail sanction. See K.S.A. 2019 Supp. 22-3716(c)(1)(C). The court may revoke probation without having previously imposed any sanction if the offender committed a new felony or misdemeanor while on probation. K.S.A. 22-3716(c)(7)(C).

We see no abuse of discretion by the district court. There is no dispute the district court had the legal and factual authority to revoke Jones' probation and impose the full underlying sentence because he had already served a two-day jail sanction and he committed a new felony while on probation. A reasonable person could agree with the district court's decision to impose Jones' underlying sentence without modification because—despite Jones' access to community programs—he committed the same felony crime again while on probation. Even after he was given a quick-dip sanction for his initial probation violations, he did not modify his behavior. He committed a series of probation violations, including a new crime. We conclude the district court did not abuse its discretion in denying Jones' requests for reinstatement of probation and sentence modification.

Affirmed.