

NOT DESIGNATED FOR PUBLICATION

Nos. 126,186
126,187

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

BETHANY ANN SNOW,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court, ERIC WILLIAMS, judge. Opinion filed December 1, 2023.
Affirmed.

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

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

PER CURIAM: Bethany Ann Snow appeals the district court's revocation of her probation in two cases. We consolidated the cases on appeal and granted Snow's motion for summary disposition under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). In its response, 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.

In case No. 21CR2556, Snow was convicted of one count of theft and one count of fleeing or attempting to elude an officer for acts she committed in December 2021. The district court sentenced Snow to 12 months' probation with a total underlying prison term

of 8 months. In case No. 21CR2571, Snow was convicted of one count of possession of methamphetamine for an act she committed in December 2020. The district court sentenced Snow to 18 months' probation with an underlying prison term of 30 months. The district court ordered that Snow serve the sentences concurrently.

Snow did not do well on probation. Only a few months into her probation term, in case No. 21CR2571, she waived her right to a hearing, admitted to violating the conditions of her probation by using illegal drugs, and accepted a three-day intermediate jail sanction. Later, Snow's intensive supervision officer (ISO) filed warrants in both cases alleging a bevy of probation violations, including the commission of new crimes:

- "1. On 11/16/22, the defendant provided Saline County ISO with UA that tested positive for Fentanyl.
- "2. On 12/04/22, the defendant committed the offense of Aggravated Battery as alleged in Salina Police Department Report 2022-00036030.
- "3. On 12/04/22, the defendant committed the offense of Domestic Battery as alleged in Salina Police Department Report 2022-00036030.
- "4. On 12/04/22, the defendant committed the offense of Criminal Trespass as alleged in Salina Police Department Report 2022-00036030.
- "5. On 12/04/22, the defendant engaged in assaultive behavior as alleged in Salina Police Department Report 2022-00036030."

At the subsequent probation violation hearing, Snow waived her right to an evidentiary hearing and admitted the probation violations alleged in the warrants. By the time of the hearing, Snow had been convicted of aggravated battery in the case arising from her conduct described in the warrants. The district court ultimately revoked Snow's probation in both cases and ordered her to concurrently serve the underlying prison terms. The district court explained its decision from the bench:

"[I]n the 21 CR 2571 case there was a probation sanction filed by—there wasn't a warrant but there was a sanction filed by your probation officer. You waived counsel to have them enter a sanction for a dirty UA it looked like.

"All that being said—what we have before us at this point in time [is] the use of Fentanyl, the domestic battery, criminal trespass. And I understand that in the other county—not only are you admitting it for the purposes of this hearing and this standard, but you've been found guilty—entered a plea and been found guilty of aggravated battery as well.

"That being said, you had an opportunity at probation in the 20 CR case. You failed to report, committed new crimes, been placed on probation again in all three of these cases, and you continue to commit crimes and violent crimes at that. The Court makes the finding that you are not amenable to probation and that you are a public safety risk at this point in time. I'm going to revoke your probation on all three cases and impose the original sentence[s]."

In its subsequent probation revocation journal entries, the district court indicated that it revoked Snow's probation pursuant to K.S.A. 2020 Supp. 22-3716(c)(7)(C) because Snow committed new crimes. Snow timely appealed the district court's revocation of her probation in both cases, and we consolidated the cases on appeal.

As a preliminary matter, K.S.A. 2021 Supp. 22-3716 governs Snow's probation violations in case 21CR2556, but K.S.A. 2020 Supp. 22-3716 governs Snow's probation violations in case 21CR2571. However, the relevant provisions of the statute were not amended from 2020 to 2021, so we cite the 2021 supplement instead of citing both supplements.

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. Appellate courts review "the propriety of the sanction for a probation violation imposed by the district court for an abuse of discretion." *State v. Tafolla*, 315 Kan. 324, 328, 508 P.3d 351 (2022). A court abuses its discretion if its decision is arbitrary, fanciful, or

unreasonable or it is based on an error of law or 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." *State v. Brown*, 51 Kan. App. 2d 876, Syl. ¶ 4, 357 P.3d 296 (2015). Snow bears the burden of establishing such abuse of discretion. See *Tafolla*, 315 Kan. at 328.

K.S.A. 2021 Supp. 22-3716(c)(1) generally requires the imposition of an intermediate sanction before the district court can revoke probation. However, K.S.A. 2021 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 pursuant to K.S.A. 2021 Supp. 22-3716(c)(1). Specifically, K.S.A. 2021 Supp. 22-3716(c)(7)(C) provides that the district court may revoke an offender's probation without having previously imposed an intermediate sanction if "the offender commits a new felony or misdemeanor while the offender is on probation."

In her motion for summary disposition, Snow argues the district court abused its discretion in revoking her probation:

"[Snow] indicated that her new crime(s) arose from a domestic dispute involving the father of her child, that she had already accepted responsibility for her actions in that matter, and that, prior to the altercation, she had been doing well in drug court. She asked the district court to impose a 60-day jail sanction and allow her to return to drug court or inpatient treatment. Given these facts, that there was still treatment available in the community that [Snow] was participating in prior to the domestic dispute, the district court abused its discretion in revoking her probation."

At the outset, we note that the district court was not statutorily required to impose an intermediate sanction before revoking Snow's probation because she committed new

crimes. See K.S.A. 2021 Supp. 22-3716(c)(7)(C). Notably, Snow had already received an intermediate sanction in case No. 21CR2571. The district court therefore had the authority to revoke her probation in that case without first imposing an additional intermediate sanction. See K.S.A. 2021 Supp. 22-3716(c)(1)(C).

On appeal, Snow does not argue that the district court's revocation of her probation constituted an abuse of discretion because it was based upon a legal or factual error. Therefore, we can only reverse the district court's revocation of Snow's probation if Snow carries her burden of demonstrating that 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. Snow has not carried that burden.

As the district court emphasized at the probation revocation hearing, not only did Snow commit new offenses while on probation, but she also committed aggravated battery—a violent person felony. See K.S.A. 2022 Supp. 21-5413(h)(2). And Snow's unwillingness to comply with the conditions of her probation persisted even after she received a three-day intermediate jail sanction for a previous violation. It was therefore not unreasonable for the district court to conclude that extending Snow's probation would be futile. Given the facts with which the district court was confronted, we cannot say that no reasonable person would agree with the district court's decision to revoke Snow's probation. The district court did not abuse its discretion in revoking Snow's probation and ordering her to serve her underlying prison sentences.

Affirmed.