

NOT DESIGNATED FOR PUBLICATION

No. 126,459

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

LANDON SCOTT STRANO,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Graham District Court; PRESTON A. PRATT, judge. Submitted without oral argument. Opinion filed December 15, 2023. Affirmed.

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

Before HILL, P.J., MALONE and ATCHESON, JJ.

PER CURIAM: Landon Scott Strano appeals the district court's decision revoking his probation and ordering him to serve his original sentence. We granted Strano's motion for summary disposition under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). Finding no abuse of discretion, we affirm the district court's judgment.

Strano pled guilty to one count of trafficking contraband in a correctional institution. The crime occurred in June 2022. Strano moved for dispositional departure so he could receive inpatient drug treatment, and the State joined in the departure motion. The district court sentenced Strano to 27 months' imprisonment but granted the motion for dispositional departure to probation for 24 months.

The State later moved to revoke Strano's probation based on an affidavit from Strano's intensive supervision officer who reported that Strano repeatedly tested positive for or admitted to using methamphetamine and marijuana. Strano also failed to complete drug treatment, instead being unsuccessfully discharged for missing too many classes. Strano also committed several surveillance violations and one curfew violation.

At the time of his probation violation hearing, Strano had served three "quick dips," which are two to three days of confinement in the county jail for probation violations. Strano stipulated to all but one of the probation violations. He asked the district court to give him a 60-day jail sanction, after which he would go directly to drug treatment. Instead, the district court revoked Strano's probation and ordered him to serve his original sentence. Strano timely appealed the district court's judgment.

On appeal, Strano claims the district court "abused its discretion in revoking his probation." He repeats the argument he made in district court that he should have received a 60-day jail sanction followed by placement in drug treatment. The State has not responded to Strano's motion for summary disposition.

The procedure for revoking a defendant's probation is governed by K.S.A. 2022 Supp. 22-3716. Generally, once the State has presented evidence of a violation of the conditions of probation, the decision to revoke probation rests within the district court's sound discretion. *State v. Coleman*, 311 Kan 332, 334, 460 P.3d 828 (2020). A judicial action constitutes an abuse of discretion if it is (1) arbitrary, fanciful, or unreasonable; (2) based on an error of law; or (3) based on an error of fact. *State v. Ingram*, 308 Kan. 1466, 1469, 430 P.3d 931 (2018). Strano bears the burden of showing an abuse of discretion by the district court. See *State v. Thomas*, 307 Kan. 733, 739, 415 P.3d 430 (2018).

Strano does not contest the district court's legal authority to revoke his probation. See K.S.A. 2022 Supp. 22-3716(c)(1)(C) (authorizing probation revocation as long as the

probationer has received an intermediate sanction under K.S.A. 2022 Supp. 22-3716[c][1][B]); K.S.A. 2022 Supp. 22-3716(c)(7)(B) (authorizing probation revocation where probation was originally granted because of a dispositional departure). Rather, he argues that "[n]o reasonable judge would have agreed with the decision to revoke his probation and send him to prison when his main concern was treatment for his drug addiction."

We are not persuaded by Strano's argument. Strano's departure sentence provided him with an opportunity to avoid going to prison, but Strano failed to take advantage of the opportunity. Strano repeatedly used drugs throughout his probation. In denying Strano's request for a 60-day jail sanction followed by drug treatment, the district court summarized Strano's failures on probation including being discharged from his treatment program for failure to attend. The district court also noted Strano's "quick dips" for prior probation violations. Based on the record, the district court's decision to revoke Strano's probation was not arbitrary, fanciful, or unreasonable, and it was not based on an error of fact or law. Strano has failed to show that the district court abused its discretion by revoking his probation and ordering him to serve his original sentence.

Affirmed.