

NOT DESIGNATED FOR PUBLICATION

No. 114,225

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

ERIC KISER,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Lyon District Court; W. LEE FOWLER, judge. Opinion filed December 23, 2015.  
Affirmed.

Submitted for summary disposition pursuant to K.S.A. 2014 Supp. 21-6820(g) and (h).

Before MALONE, C.J., PIERRON and BRUNS, JJ.

*Per Curiam:* Eric L. Kiser appeals his sentence following his conviction of one count each of felony driving under the influence of alcohol (DUI) and interference with a law enforcement officer. We granted Kiser's motion for summary disposition in lieu of briefs pursuant to Supreme Court Rule 7.041A (2015 Kan. Ct. R. Annot. 67). The State has filed a response and requested that the district court's judgment be affirmed.

On February 18, 2015, Kiser pled no contest to one count each of felony DUI and interference with a law enforcement officer, a class A misdemeanor. At the sentencing hearing on April 21, 2015, Kiser argued that he had a number of physical injuries caused by his military service. He requested that he be sent to a special program in Leavenworth where he would not be subjected to the conditions of the county jail, which aggravated

his physical injuries. The district court denied Kiser's request for placement in the Leavenworth program and imposed a controlling sentence of 1 year in the county jail. Kiser timely appealed his sentence.

On appeal, Kiser argues that the district court erred "by failing to place [him] in the Leavenworth program and imposing a one year jail sentence." We review the district court's sentence for an abuse of discretion. A judicial action constitutes an abuse of discretion if the action (1) is arbitrary, fanciful, or unreasonable; (2) is based on an error of law; or (3) is based on an error fact. *State v. Mosher*, 299 Kan. 1, 3, 319 P.3d 1253 (2014). The party asserting that the district court abused its discretion bears the burden of showing such abuse of discretion. *State v. Rojas-Marceleno*, 295 Kan. 525, 531, 285 P.3d 361 (2012); see also *State v. Anthony*, 274 Kan. 998, 999-1002, 58 P.3d 742 (2002) (DUI sentences governed by pre-Guidelines abuse of discretion).

In imposing the sentence, the district court noted that this case was Kiser's 10th conviction for DUI. The district court's decision to sentence Kiser to 1 year in the county jail for his 10th DUI conviction was not arbitrary, fanciful, or unreasonable, and the decision was not based on an error of law or fact. Kiser has failed to meet his burden of showing that the district court abused its discretion in imposing the sentence.

Affirmed.