

NOT DESIGNATED FOR PUBLICATION

No. 124,802

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

VICTORIA TAYLOR,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; BRUCE C. BROWN, judge. Opinion filed June 9, 2023.
Affirmed.

Jacob Nowak, of Kansas Appellate Defender Office, for appellant.

Julie A. Koon, assistant district attorney, *Marc Bennett*, district attorney, and *Derek Schmidt*, attorney general, for appellee.

Before MALONE, P.J., HURST and COBLE, JJ.

PER CURIAM: After being charged with several crimes and then failing to appear for multiple hearings, Victoria Taylor entered into a plea agreement in which the State agreed to several favorable conditions in exchange for her guilty plea. However, the State also included language in the plea agreement that it would not be bound to these favorable terms in the event Taylor failed to appear for future hearings. Continuing with her pattern, Taylor failed to appear for sentencing. The State argued that Taylor's failure to appear alleviated it of any obligation to recommend favorable sentencing, and the

district court sentenced Taylor to 12 months of probation and the highest allowable underlying incarceration sentences for each conviction to run consecutive. Taylor claims that the district court abused its discretion by running her sentences consecutive. Finding no abuse of discretion, the district court is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

The State charged Taylor with felony possession of stolen property, possession of drug paraphernalia with intent to use, and driving with a suspended license. After being served with the summons, Taylor failed to appear as directed and the court issued its first warrant for her arrest. After the court set Taylor's bond and scheduled a preliminary hearing, Taylor failed to appear at the preliminary hearing and the court issued a second warrant for her arrest.

As part of a plea agreement, Taylor pled guilty to felony theft and misdemeanor possession of drug paraphernalia. In exchange for her guilty pleas, the State agreed to dismiss the driving while suspended charge, recommend the lowest sentence for the felony theft and six months for the misdemeanor count, and to recommend that the sentences run concurrent. The State also agreed to recommend that the district court follow the statutory presumption and sentence her to probation. However, the State also included language in the plea agreement that it would not be bound by the agreement if Taylor "fails to appear for a court appearance at any time after the entry of the plea agreement and the time of sentence being imposed."

After entering her plea, the district court ordered Taylor to appear for sentencing in August 2021. When she failed to appear, the court issued a third warrant for her arrest, and Taylor was arrested in Montgomery County, Texas, in December 2021 and extradited to Kansas.

On January 14, 2022, the district court heard arguments regarding sentencing in which the parties agreed that Taylor's criminal history score was I.

The State explained that Taylor had violated the terms of the plea agreement by leaving the state and it was entitled to deviate from the plea agreement. The State asked the court to sentence Taylor to 12 months of probation with underlying prison term of seven months for the felony theft charge and six months in jail for the misdemeanor possession of paraphernalia charge. It requested the court run the underlying prison and jail sentences consecutive. Considering Taylor's criminal history score, her felony theft conviction carried a presumptive prison sentence range of five to seven months, and her misdemeanor conviction carried a presumptive jail sentence of up to six months, with both having a presumption of probation.

Taylor's attorney acknowledged that Taylor had violated the plea agreement which meant the State was no longer bound by its terms. Taylor's attorney declined to challenge the length of prison term requested by the State, but did ask the court to run Taylor's underlying prison and jail terms concurrent and impose 12 months of probation because it was her first felony conviction.

The district court explained that Taylor did not appear to be a good candidate for probation as evidenced by the three arrest warrants that had been issued during the pendency of the case, her extradition from another state, and her demeanor and body language indicated that she did not take the matter seriously. The court further explained that Taylor had previous convictions—albeit for misdemeanors—in which she was given probation and reoffended. The court also read aloud from the victim impact statement for the felony theft charge. Taylor argued that this was her first felony conviction, she failed to come to court due to the COVID pandemic, and some "tragic things" happened that were not her fault. She claimed that she had two potential jobs waiting for her, which would allow her to pay the required restitution to the victim.

The district court sentenced Taylor to 12 months of probation with the highest allowable incarceration terms under the presumptive sentence range for each of her convictions—seven months in prison for the felony charge and six months in jail for the misdemeanor possession of paraphernalia charge—and ordered them to run consecutive. Taylor appealed, challenging the district court's decision to run her underlying sentences consecutive rather than concurrent.

ANALYSIS

"When separate sentences of imprisonment for different crimes are imposed on a defendant on the same date . . . such sentences shall run concurrently or consecutively as the court directs." K.S.A. 2022 Supp. 21-6606(a). The district court generally has wide discretion to determine whether to run sentences consecutive or concurrent. *State v. Ross*, 295 Kan. 1126, 1138, 289 P.3d 76 (2012). Taylor's sole argument on appeal is that the district court abused its discretion by running her sentences consecutive rather than concurrent. She argues this decision was unreasonable because her criminal history included only nonviolent misdemeanors, her current convictions were for nonviolent crimes, she admitted responsibility by pleading guilty, and she agreed to pay restitution to the theft victim.

This court reviews a district court's decision on whether to run sentences consecutive or concurrent for an abuse of discretion. See *Ross*, 295 Kan. at 1129. A district court abuses its discretion if its decision:

"(1) is arbitrary, fanciful, or unreasonable, *i.e.*, if no reasonable person would have taken the view adopted by the trial court; (2) is based on an error of law, *i.e.*, if the discretion is guided by an erroneous legal conclusion; or (3) is based on an error of fact, *i.e.*, if substantial competent evidence does not support a factual finding on which a prerequisite

conclusion of law or the exercise of discretion is based." *State v. Ward*, 292 Kan. 541, 550, 256 P.3d 801 (2011).

Although Taylor's assertions might be accurate, none of them demonstrate that the district court abused its discretion. The district court explained the reasons for sentencing Taylor with consecutive sentences, including her repeated failures to appear in the present case, her criminal history, and she had previously committed crimes while on probation. The court also took the victim's statement into account. Taylor has not alleged that the court relied on an error of fact or law in its decision—and this court finds no such error. Moreover, this court cannot say that the district court's decision was arbitrary, fanciful, or that no reasonable person would have agreed. The court considered Taylor's arguments, as well as the other facts, and simply did not agree that Taylor's mitigating factors supported her request for concurrent sentences.

CONCLUSION

The district court's decision to run Taylor's sentences consecutive is not an abuse of discretion.

Affirmed.