

NOT DESIGNATED FOR PUBLICATION

No. 124,983

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

CHRISTOPHER BORIS WILSON,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Wyandotte District Court; JENNIFER L. MYERS, judge. Opinion filed February 24, 2023. Affirmed in part and dismissed in part.

Submitted by the parties for summary disposition pursuant to K.S.A. 2021 Supp. 21-6820(g) and (h).

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

PER CURIAM: Christopher Boris Wilson appeals the district court's revocation of his probation. We granted Wilson's motion for summary disposition under Kansas Supreme Court Rule 7.041A (2022 Kan. S. Ct. R. at 48). The State did not respond to Wilson's motion. Finding no error, we affirm in part and dismiss in part.

In December 2020, Wilson pleaded no contest to possession of methamphetamine and the district court found him guilty of that offense committed in May 2019. At sentencing in October 2021, the district court determined his criminal history score to be C. Wilson's standard presumptive sentence was 20 months' imprisonment. Ultimately, the district court granted Wilson's motion for a downward dispositional departure, finding

that doing so served the interest of the community and Wilson's needs for treatment. As a result of this departure, the district court sentenced him to 12 months' probation, suspending his sentence of 20 months' imprisonment.

In December 2021, the State moved to revoke Wilson's probation, citing multiple reasons, one of which was that the State had filed at least nine new charges against him. At Wilson's probation revocation hearing, he stipulated to the violations of his probation. As a result, in March 2022, the district court revoked his probation and ordered him to serve his underlying sentence, which the district court modified to 24 months' imprisonment.

Wilson timely appeals his probation revocation.

First, Wilson argues that the district court's use of his criminal history at sentencing without submitting it to a jury and proving it beyond a reasonable doubt violated due process under *Apprendi v. New Jersey*, 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000). But Wilson did not appeal his sentence, imposed in October 2021, within 14 days, as our statute requires. See K.S.A. 2021 Supp. 22-3608(c); *State v. Inkelaar*, 38 Kan. App. 2d 312, 317-18, 164 P.3d 844 (2007) (holding that defendant's notice of appeal was timely only as to his probation revocation and not as to his original sentence). And a claim that a sentence violates a constitutional provision does not make the sentence illegal within the meaning of K.S.A. 2021 Supp. 22-3504, so that it can be corrected at any time. See *State v. Warrior*, 303 Kan. 1008, 1010, 368 P.3d 1111 (2016). Because Wilson did not timely appeal his sentence, we lack jurisdiction to address his sentencing issue. But even if we had jurisdiction to address the issue, Wilson's argument has been rejected by *State v. Ivory*, 273 Kan. 44, 46-47, 41 P.3d 781 (2002). See *State v. Sullivan*, 307 Kan. 697, 708, 414 P.3d 737 (2018) (reaffirming *Ivory*). Wilson's appeal is dismissed on this issue.

Second, Wilson argues that the district court abused its discretion by revoking his probation and ordering him to serve his underlying sentence because he was willing to go to drug treatment, which would have provided a better alternative to address his underlying issues causing his recidivisms.

When a district court decides to revoke probation and orders a defendant to serve an underlying sentence, K.S.A. 2018 Supp. 22-3716 serves as a framework for the court's decision. Typically, a district court must impose intermediate sanctions before revoking a defendant's probation. See K.S.A. 2018 Supp. 22-3716(c)(1). But a district court may bypass these intermediate sanctions if the offender's probation "was originally granted as the result of a dispositional departure." K.S.A. 2018 Supp. 22-3716(c)(9)(B). That rule applies here, as Wilson's probation was granted through a dispositional departure.

Still, Wilson argues that the district court abused its discretion because his sobriety would have best been served on probation where he could access treatment. But the district court correctly found that it had given Wilson an opportunity for treatment while on probation, yet Wilson did not succeed in using those opportunities. Rather, Wilson admitted to having engaged in acts that led the State to file at least nine new criminal charges against him. See K.S.A. 2018 Supp. 22-3716(c)(8)(A) (district court may revoke probation when offender commits new crimes while on probation). Wilson fails to explain how the district court did not act within its sound discretion.

Our review shows that the district court acted within its discretion and within the applicable law when it revoked Wilson's probation and imposed his underlying modified sentence. We affirm the district court on this issue.

Affirmed in part and dismissed in part.