

NOT DESIGNATED FOR PUBLICATION

No. 125,099

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

SCOTT A. DEVAULT,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Reno District Court; JOSEPH L. MCCARVILLE III, judge. Opinion filed March 31, 2023. Affirmed.

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

Before GREEN, P.J., HILL and COBLE, JJ.

PER CURIAM: In this appeal of the revocation of his probation, Scott A. Devault contends that the district court abused its discretion by refusing to impose an intermediate sanction and reinstate his probation rather than send him to prison. We granted Devault's motion for summary disposition under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). After reviewing the record, we find no error and affirm.

Devault pled guilty to nine crimes—four person felonies, and five misdemeanors. The felonies are: three counts of stalking—all severity level 5 person felonies, and one count of stalking—a severity level 9 person felony. The five misdemeanors are: two

counts of violating a protection from abuse order, one count of stalking, and two counts of criminal trespass in defiance of a protection from abuse order.

Devault agreed at his sentencing hearing that his criminal history score was A. The court sentenced Devault to serve a prison term of 200 months and a consecutive jail term of 36 months. The court granted Devault's motion for a downward dispositional departure and rather than send him to prison, the court released Devault on a term of 36 months' probation.

Devault violated his probation by testing positive for methamphetamine. As a result, Devault received a three-day "quick dip" jail sanction.

After that, Devault stipulated that he had violated several terms of his probation:

- He was unsuccessfully discharged from outpatient treatment;
- he failed to report as directed;
- he had contact with the victim in this case;
- he used methamphetamine two times; and
- he had failed to report to his probation supervisor about his contact with law enforcement officers within 48 hours as required by the terms of his probation.

The district court revoked Devault's probation. It lowered his prison term to 130 months instead of 200. In explaining its decision to revoke Devault's probation, the court emphasized Devault's extensive criminal history and his repeated failure to comply with the terms of his probation. Since Devault had been given many opportunities to reform his behavior, the court said it would not be appropriate to reinstate Devault's probation. In the journal entry, the court stated that it revoked Devault's probation for public safety or Devault's own welfare.

In this appeal, Devault offers no argument and cites no supporting authority to show that the district court in some way abused its discretion in revoking his probation. Instead, Devault simply asserts the bare, conclusory allegation that "[t]he district court abused its discretion by refusing to impose sanctions and reinstate probation."

The district court was not statutorily required to impose an intermediate sanction for two reasons. First, Devault already had an intermediate sanction imposed. See K.S.A. 2022 Supp. 22-3716(c)(1)(B). Therefore, under K.S.A. 2022 Supp. 22-3716(c)(1)(C), the district court could revoke Devault's probation without first imposing another intermediate sanction.

Second, Devault's probation was revoked because of the public safety or offender welfare exception. Therefore, under K.S.A. 2022 Supp. 22-3716(c)(7)(A), the district court was not required to impose any intermediate sanctions before revoking Devault's probation.

Devault admitted to several probation violations, and the district court was not statutorily required to impose an intermediate sanction. Nor does Devault assert that the district court's revocation of his probation was based on a legal or factual error. Therefore, we can only reverse the district court's revocation of Devault's probation and imposition of a modified prison term if no reasonable person would agree with the district court's decision. *State v. Tafolla*, 315 Kan. 324, 328, 508 P.3d 351 (2022); *State v. Brown*, 51 Kan. App. 2d 876, Syl. ¶ 4, 357 P.3d 296 (2015).

The decision to revoke Devault's probation was reasonable. The district court's original decision to grant Devault's motion for a downward dispositional departure and grant him probation was an opportunity that he squandered. Devault repeatedly violated his probation. Moreover, his unwillingness to comply with the terms of his probation has persisted even after he received a three-day intermediate jail sanction for previous

probation violations. In our view, it was proper for the district court to conclude that extending Devault's probation would be futile.

A reasonable person could determine that Devault's extensive criminal history—considered in tandem with his many probation violations—shows that he poses a danger to public safety. Likewise, a reasonable person could determine that Devault's continued drug use while on probation threatens his own welfare. These considerations provide more bases upon which a reasonable person could agree with the district court's decision to revoke Devault's probation.

We affirm the district court's decision to revoke Devault's probation and order he serve his modified sentence.

Affirmed.