NOT DESIGNATED FOR PUBLICATION

No. 125,416

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

SHAWN A. CLINE,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; JEFFREY SYRIOS, judge. Opinion filed July 21, 2023. Affirmed.

Kasper Schirer, of Kansas Appellate Defender Office, for appellant.

Boyd K. Isherwood, assistant district attorney, *Marc Bennett*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before HILL, P.J., HURST, J., and TIMOTHY G. LAHEY, S.J.

PER CURIAM: Shawn A. Cline appeals the revocation of his probation. He contends the district court's decision was unreasonable because he was struggling with addiction and treatment was available for him. Finding no abuse of discretion by the district court, we affirm.

Cline pled guilty to failing to register in March 2019 in violation of the Kansas Offender Registration Act for his conviction for aggravated battery. The district court

sentenced Cline to 38 months in prison but made a downward dispositional departure sentence to 24 months' probation.

Cline admitted later to violating his probation by testing positive for methamphetamine on two occasions and failing to maintain employment. For these violations, Cline served a three-day jail sanction. A few months later, Cline admitted to violating his probation by testing positive for methamphetamine, failing to attend drug and alcohol treatment, failing to obtain employment, and failing to report to his supervisor. For these violations, Cline served a 60-day jail sanction, and his probation was extended for one year.

Then in July 2022, Cline admitted to again violating his probation by testing positive for methamphetamine. He did not contest the State's allegation that he failed to attend outpatient drug and alcohol treatment pending an inpatient bed. Cline explained to the district court that he was arrested for these violations just days before he was scheduled to begin inpatient treatment. He did not go earlier to outpatient treatment because he was told there was no space available. Cline also requested a modification of his sentence because he had taken responsibility for his actions.

The district court revoked Cline's probation and ordered him to serve his prison sentence. The court explained that this was Cline's third probation violation warrant for the same allegations and his probation officer was recommending revocation. The court stated that if he wanted it bad enough, he could have gotten treatment. The court denied Cline's request for a modification of his sentence. And the court noted that Cline had originally received a departure sentence.

On appeal, Cline admits the district court had the legal authority to revoke his probation and impose his underlying prison sentence. But Cline contends the district court's decision was unreasonable. The court should have given him an intermediate

sanction or imposed a mitigated sentence so that he could go to inpatient treatment. He argues that his struggles on probation were directly attributable to his addiction.

Once a probation violation is established, a district court has discretion to revoke that probation unless it is otherwise limited by statute. *State v. Tafolla*, 315 Kan. 324, 328, 508 P.3d 351 (2022). In certain circumstances the statute requires graduated sanctions before revocation of probation. See K.S.A. 2022 Supp. 22-3716(c). Once a probation violation and an exception to any intermediate sanction requirement are established, the district court has discretion to continue the probation or to revoke and require the defendant to serve the underlying prison sentence. *State v. Brown*, 51 Kan. App. 2d 876, 879-80, 357 P.3d 296 (2015). We, in turn, apply an abuse of discretion standard of review on appeal from the district court's decision to deny a motion for sentence modification under K.S.A. 2022 Supp. 22-3716(c)(1)(C). See *State v. Reeves*, 54 Kan. App. 2d 644, 648, 403 P.3d 655 (2017).

A court abuses its discretion if the decision (1) is arbitrary, fanciful, or unreasonable; (2) is based on an error of law; or (3) is based on an error of fact. Cline bears the burden of establishing such abuse of discretion. See *Tafolla*, 315 Kan. at 328.

There are exceptions to the intermediate sanctioning scheme. At the time of Cline's underlying offense, the district court could revoke probation without having previously imposed a sanction in four situations: (1) if the court "finds and sets forth with particularity the reasons for finding that the safety of members of the public will be jeopardized or that the welfare of the offender will not be served by such sanction," (2) if the offender received probation as the result of a dispositional departure, (3) if the offender committed a new felony or misdemeanor, or (4) the offender absconded while on probation. K.S.A. 2018 Supp. 22-3716(c)(8)-(9).

Cline received probation as the result of a dispositional departure. Thus, the district court could properly bypass the intermediate sanction scheme. Cline repeatedly failed to engage in drug treatment and continued to use drugs. It was up to him to follow through. This was his third series of probation violations. We see no error of fact or law. We cannot say no reasonable person would agree with the district court's decision to revoke Cline's probation and impose his underlying sentence.

Cline further argues the district court erred by failing to explicitly invoke the dispositional departure bypass exception to the intermediate sanction scheme. Cline acknowledges that our Supreme Court held otherwise in *Tafolla* and that we are duty-bound to follow Supreme Court precedent. See 315 Kan. at 330-33. He includes this argument that *Tafolla* was wrongly decided to preserve it for further review.

In *Tafolla*, like here, the district court noted the probationer had been granted a departure at sentencing but did not specifically invoke the dispositional departure exception to bypass intermediate sanctions during the hearing or on the journal entry. The Supreme Court upheld the revocation, finding no error of law under the statute. 315 Kan. at 331.

We are duty-bound to follow Kansas Supreme Court precedent unless there is some indication that the Supreme Court is departing from its previous position. *State v. Rodriguez*, 305 Kan. 1139, 1144, 390 P.3d 903 (2017). We see no indication that the Supreme Court is departing from its holding in *Tafolla*.

Affirmed.