

NOT DESIGNATED FOR PUBLICATION

No. 125,422

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

KYLE DAVID CRYSTAL,
Appellant.

MEMORANDUM OPINION

Appeal from Crawford District Court; MARY JENNIFER BRUNETTI, judge. Opinion filed March 31, 2023. Affirmed in part and dismissed in part.

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: Kyle David Crystal, on probation when he committed some new crimes, appeals the district court's denial of his motions for dispositional or durational departure related to his new convictions. He also argues that the revocation of his probation and imposition of his prison sentences are illegal without first imposing graduated sanctions. We granted his motion for summary disposition under Supreme Court Rule 7.041A (2022 Kan. S. Ct. R. at 48). Our review of the record discloses no legal error by the court nor an abuse of discretion. We affirm in part and dismiss in part.

In four separate prosecutions, Crystal pled no contest to two counts of aggravated domestic battery, criminal possession of a firearm by a felon, and felony theft. In exchange for Crystal's pleas, the State dismissed all remaining charges.

As part of the plea agreement, Crystal stipulated to the probation violations raised in the State's application to revoke probation in the prior prosecution for aggravated battery and the second for possession of methamphetamine. The district court found Crystal violated the terms of probation in each of those cases but elected to announce disposition at the time of Crystal's sentencing in his new cases.

Based on the parties' agreement, the district court released Crystal on bond with supervision in May 2022, pending his sentencing.

At the sentencing hearing, Crystal's community corrections officer testified Crystal was supposed to report to his ISO four times per month while on bond supervision pending sentencing but last reported in May 2022. Crystal had not reported weekly as required. The district court denied Crystal's motions for dispositional or durational departures in his new cases, noting Crystal had committed new crimes while on probation for a felony offense.

The court sentenced Crystal to 32 months' imprisonment for each aggravated domestic battery conviction—one in 2020 and one in 2021. The court ordered 19 months' imprisonment for criminal possession of a firearm by a felon in the 2021 case and 15 months' imprisonment for felony theft in the 2021 case.

Finally, in the 2017 probation revocation cases in which the court had delayed disposition, the court ordered Crystal to serve his underlying prison sentences.

Crystal argues the district court erred in denying his motions for dispositional or durational departure in setting his sentences in his new convictions and bypassing the graduated sanctions in the probation revocation cases.

We cannot review sentences within the presumptive guideline sentence for a felony crime. We are barred by K.S.A. 2022 Supp. 21-6820(c)(1). A presumptive sentence is a sentence within the range set forth in the sentencing grid, factoring in both the severity level for the crime of conviction and the defendant's criminal history score. See *State v. Farmer*, 312 Kan. 761, 764, 480 P.3d 155 (2021).

The sentences Crystal received for his new crimes are all within the ranges set forth in the sentencing grid based on the severity level of the crimes and Crystal's criminal history score of A. Thus, we will not review Crystal's presumptive sentences in those cases and dismiss this part of the appeal.

Turning to the probation revocation cases, we note that once the district court has determined the defendant has violated the terms of probation, the decision to revoke probation lies in the discretion of the district court, subject to statutory limitations. *State v. Tafolla*, 315 Kan. 324, 328, 508 P.3d 351 (2022). A district court abuses its discretion if its decision is based on an error of fact or law or is arbitrary, fanciful, or unreasonable. *State v. Levy*, 313 Kan. 232, 237, 485 P.3d 605 (2021). Crystal bears the burden to establish such abuse of discretion. See *State v. Crosby*, 312 Kan. 630, 635, 479 P.3d 167 (2021).

Here, we find no error of law or fact by the court. Crystal stipulated that he had violated the terms of his probation. In fact, while on probation, Crystal pled no contest to four new felonies.

The district court could bypass sanctions and revoke Crystal's probation. K.S.A. 2016 Supp. 22-3716(c)(9)(A) provides that a court may revoke probation without having previously imposed sanctions if the court finds and sets forth with particularity reasons for finding that the public's safety will be jeopardized, or that the welfare of the offender will not serve such sanction.

Here the district court set forth with particularity:

"The Court is bypassing sanctions, finding that Mr. Crystal poses a threat to the public safety based upon his convictions that the Court just sentenced him on. I think there is ample reason to bypass the graduated sanctions based upon his inability to remain law abiding, having pled in those cases. He clearly poses a danger. Those are two person offenses of domestic—aggravated domestic battery, convicted felon in possession of a firearm. The Court finds reason to bypass the graduated sanctions and would be doing so."

In our view, the district court was within its statutory authority and sound discretion in sentencing Crystal, revoking his probation, and imposing his underlying sentences.

Affirmed in part and dismissed in part.