

NOT DESIGNATED FOR PUBLICATION

Nos. 125,460  
125,461  
125,462

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

RACHEL DAIL WITTER,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Sedgwick District Court; KEVIN M. SMITH, judge. Opinion filed July 14, 2023.  
Affirmed.

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

Before ARNOLD-BURGER, C.J., MALONE and SCHROEDER, JJ.

PER CURIAM: In three cases consolidated for appeal, Rachel Dail Witter appeals the Sedgwick County District Court's revocation of her probation and imposition of modified prison sentences. Witter seeks summary disposition of the appeal under Kansas Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). The State has responded and asks that the district court's judgment be affirmed.

In Sedgwick County District Court case No. 19 CR 1951 (Case 1), Witter was convicted of burglary and theft after she entered guilty pleas. The district court placed Witter on probation with a controlling underlying prison term of 30 months. In Sedgwick

County District Court case No. 20 CR 183 (Case 2), Witter was convicted of theft after a guilty plea. In Sedgwick County District Court case No. 20 CR 465 (Case 3), Witter was convicted of possession of methamphetamine and theft after guilty pleas.

While Cases 2 and 3 were pending, Witter's probation officer filed a warrant, alleging violations of the conditions of Witter's probation in Case 1 because Witter was discharged from her substance abuse treatment program for failing to attend for a month and Witter failed to report to her probation officer, who did not know Witter's location because she changed addresses without notifying her probation officer. A subsequent warrant alleged that Witter had committed a new crime and had submitted urine samples that tested positive for amphetamines and opiates. At the plea hearing in Cases 2 and 3, Witter admitted these allegations of violations of her probation.

Before the disposition and sentencing hearings in these matters, the State alleged that Witter committed another violation of her probation and the conditions of her bond by testing positive for methamphetamines or amphetamines, by failing to provide verification that she had engaged with mental health providers, by failing to follow her medication management plan, by failing to complete a drug and alcohol evaluation, by failing to provide proof of attendance at Alcoholics' or Narcotics' Anonymous meetings, and by failing to enter a sober living facility.

Despite Witter's many probation violations, the district court imposed a 60-day jail sanction and extended Witter's probation for 12 months in Case 1. The district court also granted Witter's request for dispositional departure to probation in Cases 2 and 3. In Case 2, the court ordered Witter to serve a 12-month probation with an underlying prison term of 13 months. The court ordered the prison sentence to run consecutive to any sentences previously imposed. In Case 3, the court imposed a controlling underlying prison term of 37 months followed by 12 months of postrelease supervision but granted probation for 12

months. The court ordered the prison sentence to run consecutive to any sentences previously imposed.

Within a month of the probation extension and new sentences, Witter's probation officer filed another warrant, complaining that Witter failed to report and that Witter submitted a urine sample that tested positive for amphetamines and opiates. After Witter admitted to the alleged violations of her probation, the court imposed a 60-day jail sanction and reinstated probation in all three cases.

A few months after sentencing, Witter's probation officer filed another warrant, alleging that Witter had failed to provide her probation officer with proof of a mental health evaluation, had failed to attend outpatient treatment, had committed two new crimes of trespass and property destruction, and had failed to notify her probation officer of these arrests or to appear for her scheduled appointments.

Because Witter admitted to the allegations, the district court revoked Witter's probation and imposed modified sentences. Although the court noted that it was not required to make specific findings because Witter committed new offenses, the court did find that Witter posed a danger to herself and to others. In Cases 1 and 2, the court ran the controlling prison terms in the two cases concurrent, leading to a combined controlling prison term of 30 months followed by 12 months of postrelease supervision. The court modified the controlling sentence imposed in Case 3 to 30 months in prison followed by 12 months of postrelease supervision. Witter timely appealed the district court's judgment, and the cases have been consolidated on appeal.

Due process demands proof by a preponderance of the evidence of any alleged violation of the conditions of probation before a court may revoke probation. See *Gagnon v. Scarpelli*, 411 U.S. 778, 784, 93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973); *State v. Skolaut*, 286 Kan. 219, 227-28, 182 P.3d 1231 (2008). Once a district court finds a violation of the

conditions of probation, however, the later disposition of sentencing is within the district court's broad discretion. *Gagnon*, 411 U.S. at 784; *Skolaut*, 286 Kan. at 227-28.

Witter admitted violating the conditions of her probation. She does not contend that those admissions were improperly coerced or otherwise involuntary. The sentencing disposition was left to the sound discretion of the district court. Judicial discretion is abused when its exercise steps outside the applicable legal framework, relies on facts that are unsupported by substantial competent evidence, or constitutes arbitrary, capricious, or unreasonable conduct—meaning no reasonable person in the court's position would have made the same decision. See *State v. Miles*, 300 Kan. 1065, 1066, 337 P.3d 1191 (2014). Witter bears the burden of establishing the court's exercise of discretion constituted an abuse. See *State v. Wells*, 289 Kan. 1219, 1226, 221 P.3d 561 (2009).

Though discretionary, sentencing disposition in a probation revocation is not without legal parameters. K.S.A. 2022 Supp. 22-3716 provides the legal framework for determining an authorized sentencing disposition following a probation violation. Witter, however, does not contend that her probation revocation violated a statutory provision within K.S.A. 2022 Supp. 22-3716. She also cannot reasonably challenge the factual bases for the district court's decision since she admitted violating the conditions on which continued probation depended. Consequently, Witter's appeal hinges on the reasonableness of the court's decision to revoke probation and order Witter to serve modified prison sentences.

At the revocation hearing and again on appeal, Witter relied on her significant mental health issues and then argued that circumstances beyond her control, namely frostbite and gangrene along with poverty, prevented her from completing some conditions of her probation. The district court acknowledged Witter's statements but weighed them against the commission of new crimes and Witter's lack of consistent effort to complete her treatment to conclude that continued probation would prove ineffective.

When reviewing a district court's exercise of discretion, an appellate court does not substitute its judgment for that of the district court unless no reasonable person would have reached the same decision. See *Thompson v. Thompson*, 205 Kan. 630, 632, 470 P.2d 787 (1970) (applying an abuse of discretion standard of review, an appellate court does not substitute its judgment for the trial court's where the judgment is reasonable). Given the many failed probation opportunities Witter was provided to get her life together, the district court's decision to revoke Witter's probation was reasonable. Witter consistently proved she could not or would not comply with the conditions of her probation. Accordingly, Witter cannot establish the district court's action constituted an abuse of judicial discretion.

Affirmed.