

NOT DESIGNATED FOR PUBLICATION

No. 125,561

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

JOEL DAVIS,
Appellant.

MEMORANDUM OPINION

Appeal from Rice District Court; STEVEN E. JOHNSON, judge. Opinion filed April 21, 2023.
Affirmed.

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

Before MALONE, P.J., GREEN and CLINE, JJ.

PER CURIAM: Joel Davis appeals from the revocation of his probation and the imposition of his underlying sentence for possession of methamphetamine. We granted Davis' motion for summary disposition under Kansas Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). The State did not respond to Davis' motion. Finding no error, we affirm for the reasons stated below.

In January 2020, Davis pled no contest to one count of possession of methamphetamine, in violation of K.S.A. 2019 Supp. 21-5706(a). When he committed this offense in June 2019, he was on probation in another case, No. 16CR30. Because of the number and nature of Davis' previous drug possession convictions, a special sentencing rule applied which rendered the disposition of his sentence to be presumptive

prison. See K.S.A. 2022 Supp. 21-6805(f)(1) (third or subsequent felony drug possession is presumptive prison). Davis filed a motion for dispositional departure, which the district court ultimately granted. At sentencing on June 3, 2020, the district court imposed Davis' underlying sentence in case No. 16CR30. Then, the district court sentenced Davis to 12 months' probation in the case at hand, because of Davis' downward dispositional departure, with an underlying sentence of 28 months' imprisonment. Finally, the district court ordered that when Davis was released from prison for his sentence in 16CR30, Davis was to serve 30 days in jail as a condition of probation in this case and, after that, his 12 months' probation would begin.

Unfortunately, Davis struggled to abide by the terms of his probation. In August 2020, he served a three-day jail sanction for violating his probation, imposed by his probation officer.

In July 2021, he again violated his probation by failing to report and using methamphetamine, and he signed an amended order of intensive supervised probation, in which he agreed to a six-month extension of his probation.

In November 2021, the district court found he violated the terms of his probation by moving out of the Oxford House and using methamphetamine and ordered him to serve a 120-day prison sanction and extended his probation another 6 months.

Davis' struggles came to a head in May 2022 when the district court issued an arrest warrant as the result of more probation violations. The violation report stated that Davis has successfully completed a substance abuse evaluation and outpatient treatment was "pending." Nevertheless, the violation report stated Davis admitted to using methamphetamine in February and March 2022 and he had a positive urinalysis for methamphetamine on April 25, 2022. Davis' probation officer recommended he serve a

30-day jail sanction, get a new drug evaluation, complete the treatment recommendations, and have his probation extended for 6 months.

On August 17, 2022, the district court held a hearing on these alleged probation violations, at which Davis stipulated to violating his probation by using drugs. The State recounted the history of Davis' cases and, because of his history, including being on probation for "a decade" in this case and his previous cases, asked the district court to revoke Davis' probation and order him to serve his underlying sentence. Davis asked the court to follow the probation officer's recommendation and said he was willing to do treatment and live in an Oxford House. In the alternative, he asked the district court to order him to do a 180-day prison sanction.

The district court noted the case was originally presumptive prison because of a special sentencing rule and the length of time Davis has been on probation for his various cases. The court determined Davis was no longer amenable to probation and imposed Davis' underlying 28 months of imprisonment.

Davis timely appeals.

Typically, a district court's decision to revoke probation involves two steps: (1) a factual finding the probationer has violated a condition of probation and (2) a discretionary determination as to the appropriated disposition in light of the proven violation and the history of the case. *State v. Skolaut*, 286 Kan. 219, 227, 182 P.3d 1231 (2008).

When a district court decides to revoke probation and orders a defendant to serve an underlying sentence, K.S.A. 2022 Supp. 22-3716 applies as a framework for the court's exercise of its discretion. Typically, a district court must impose intermediate sanctions before revoking a defendant's probation. See K.S.A. 2022 Supp. 22-3716(b)

and (c) (requiring graduated sanctions before revocation in certain circumstances). Nevertheless, there are certain statutory provisions that allow a district court to bypass the intermediate sanctions scheme. One of these rules is found in K.S.A. 2022 Supp. 22-3716(c)(7)(B), which allows the district court to bypass the intermediate sanctions when the offender's probation "was originally granted as the result of a dispositional departure."

Judicial discretion is abused when its decision is (1) arbitrary, fanciful, or unreasonable; (2) based on an error of law; or (3) based on an error of fact. *State v. Ingham*, 308 Kan. 1466, 1469, 430 P.3d 931 (2018). Davis bears the burden of showing an abuse of discretion. See *State v. Thomas*, 307 Kan. 733, 739, 415 P.3d 430 (2018).

Davis does not dispute that he served intermediate sanctions or that his probation was granted via a dispositional departure. Nevertheless, he argues that the district court abused its discretion because it should have followed the recommendation of the probation officer or imposed a 180-day prison sanction. Davis fails to point us to a fact or law explaining why K.S.A. 2022 Supp. 22-3716(c)(1) and (c)(7)(B) should not apply and how the district court did not act within its sound discretion. As a result, he fails to show that the district court's action stemmed from an error of law or fact or was otherwise arbitrary, fanciful, or unreasonable.

Our review of the record shows that the district court acted within its discretion and within the applicable guidelines set forth in K.S.A. 2022 Supp. 22-3716(c)(1) and (c)(7)(B) when it revoked Davis' probation and imposed his underlying sentence. Because he has failed to show that the district court abused its discretion, we affirm the district court's judgment.

Affirmed.