

NOT DESIGNATED FOR PUBLICATION

No. 125,663

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

LANCE ALLEN SCHMEIDLER,
Appellant.

MEMORANDUM OPINION

Appeal from Ellis District Court; GLENN R. BRAUN, judge. Opinion filed September 29, 2023.
Affirmed.

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

Before CLINE, P.J., WARNER and PICKERING, JJ.

PER CURIAM: Lance Schmeidler appeals the district court's order revoking his probation and ordering him to serve a modified prison sentence. We granted Schmeidler's motion for summary disposition of his appeal under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). We affirm the district court's decision.

The facts in this case are an extension of those in *State v. Schmeidler* (No. 125,662, this day decided). Schmeidler initially entered a diversion agreement for aggravated sexual battery and pleaded guilty to violation of a protective order. He was placed on probation for violating the protective order. A short time later, Schmeidler violated the terms of his diversion and probation agreements when he used and possessed

methamphetamine, failed to attend substance-abuse treatment, and missed appointments with his court services officer. The district court ultimately found Schmeidler guilty of aggravated sexual battery and imposed an underlying 128-month prison sentence. The court then granted Schmeidler's request for a dispositional departure and placed him on 36 months' probation. The court denied Schmeidler's request for a durational departure for his underlying prison sentence.

About a month later, the State moved to revoke Schmeidler's probation because he had used and tested positive for methamphetamine again and had not attended any of his substance-abuse treatment meetings or completed inpatient treatment. Schmeidler stipulated to these violations at a hearing.

The district court then considered the appropriate disposition. The State requested the district court to revoke Schmeidler's probation and order him to serve a modified 60-month prison sentence. Schmeidler requested that he be permitted to remain on probation as long as he submitted to drug treatment. The district court revoked Schmeidler's probation but reduced the duration of his prison sentence from 128 months to 72 months. Schmeidler appeals.

Probation is an act of judicial leniency afforded a defendant as a privilege rather than a right. *State v. Gary*, 282 Kan. 232, 237, 144 P.3d 634 (2006). Once a probation violation has been established, the decision to modify the terms of probation or to revoke probation altogether is vested in the sound discretion of the district court, guided by K.S.A. 2022 Supp. 22-3716. See *State v. Brown*, 51 Kan. App. 2d 876, 879-80, 357 P.3d 296 (2015), *rev. denied* 304 Kan. 1018 (2016). A judicial action constitutes an abuse of discretion if it is arbitrary, fanciful, or unreasonable or if it is based on a legal or factual error. *State v. Levy*, 313 Kan. 232, 237, 485 P.3d 605 (2021).

Schmeidler does not argue that the district court's decision to revoke his probation stems from a legal or factual error. Rather, he argues the district court's order revoking his probation and imposing a modified prison sentence was unreasonable. Schmeidler asserts that while he admitted to using methamphetamine, he was transparent about his struggle with addiction. He argues that drug treatment would help him more than prison would.

Schmeidler has not been successful on probation. He has repeatedly possessed and used methamphetamine. And although drug treatment had been a condition of his diversion agreement, his probation for violating the protection order, and his probation for aggravated sexual battery, Schmeidler repeatedly did not show up for inpatient treatment or complete his outpatient treatment. Under these circumstances, the district court's decision to revoke Schmeidler's probation and impose a modified prison sentence was not unreasonable.

As the appellant, Schmeidler must demonstrate that the district court abused its discretion when it revoked his probation. See *State v. Rojas-Marceleno*, 295 Kan. 525, 531, 285 P.3d 361 (2012). He has not done so. We therefore affirm the district court's judgment.

Affirmed.