

NOT DESIGNATED FOR PUBLICATION

No. 125,676

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

ADRIAN L. REESE,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; BRUCE C. BROWN, judge. Opinion filed April 28, 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: Adrian L. Reese appeals from the revocation of his probation. We granted Reese's unopposed motion for summary disposition in lieu of briefs under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). After reviewing the record, we affirm.

In June 2019, the State charged Reese with one count of felony offender registration violation after failing to report in February 2019. Reese pleaded guilty to the charge. In exchange for his plea, the State agreed to recommend a dispositional departure to probation.

The district court granted Reese's motion for dispositional departure and sentenced him to 41 months' imprisonment but suspended the sentence and imposed 24 months of probation.

In a later warrant for Reese's arrest, the State alleged that Reese admitted to using marijuana and submitted a urinalysis that tested positive for cocaine in November 2021. Reese stipulated to the violations, and the district court extended his probation an additional 24 months.

Two more warrants for Reese's arrest were issued. In the first, the State alleged that Reese tested positive for illegal drugs, was unsuccessfully discharged from outpatient treatment, and failed to report as directed. In the second, the State alleged that Reese committed new crimes. Reese did not contest the positive tests but did not stipulate to committing the new crimes as alleged in the warrant.

The district court found by a preponderance of the evidence that Reese violated the conditions of his probation. Reese asked the district court to give him another chance on probation so he could continue to work on his sobriety through inpatient treatment. The district court declined to do so. It revoked Reese's probation and ordered him to serve his original sentence. Reese timely appeals.

In his motion for summary disposition, Reese argues the district court erred by revoking his probation. But he fails to explain how the court erred, and he acknowledges the decision to revoke probation was within the district court's discretion. See K.S.A. 2022 Supp. 22-3716(c)(7)(B) (authorizing revocation without intermediate sanctions when the probation term was originally granted because of a dispositional departure); K.S.A. 2022 Supp. 22-3716(c)(7)(C) (authorizing revocation without intermediate sanctions when the offender commits a new crime while on probation); *State v. Tafolla*,

315 Kan. 324, 328, 508 P.3d 351 (2022) (once probation violation is established the district court has discretion to revoke probation unless otherwise limited by statute).

Because the district court was statutorily authorized to revoke Reese's probation, the decision whether to do so rested in the sound discretion of the district court. A judicial action constitutes an abuse of discretion if (1) it is arbitrary, fanciful, or unreasonable; (2) it is based on an error of law; or (3) it is based on an error of fact. *State v. Levy*, 313 Kan. 232, 237, 485 P.3d 605 (2021). Reese bears the burden of proving the district court abused its discretion. See *State v. Crosby*, 312 Kan. 630, 635, 479 P.3d 167 (2021).

The district court considered Reese's request to keep working on his sobriety, but ultimately the court found Reese was not amenable to another chance at probation, noting that Reese had prior probation violations, and it had also found Reese committed new crimes while on probation. Reese has failed to show the district court abused its discretion when it revoked his probation.

Affirmed.