

NOT DESIGNATED FOR PUBLICATION

No. 126,185

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

KYLE E. BISHOP,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; JEFFREY SYRIOS, judge. Opinion filed November 9, 2023.
Affirmed.

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

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

PER CURIAM: Kyle E. Bishop appeals the district court's revocation of his probation after he stipulated to violating its terms. We granted his motion for summary disposition under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). Finding no reversible error of law or abuse of discretion, we affirm.

Pursuant to a plea agreement, Bishop pleaded guilty to aggravated arson in exchange for the State's dismissal of a remaining theft charge. The parties agreed to recommend the low number in the appropriate sentencing guidelines grid box and ask the district court to impose a sentence that will run consecutive to any prior felony case, but concurrent with any prior misdemeanor case. They also agreed to jointly request the court

impose a dispositional departure sentence. The court followed the plea agreement and sentenced Bishop to 24 months' probation with an underlying 32 months' prison sentence.

Less than two months later, the State filed a warrant for Bishop's arrest, alleging that he committed several crimes while on probation. These new crimes included public nudity, two counts of battery of a law enforcement officer, and two counts of assaultive behavior towards a law enforcement officer. Bishop waived his right to an evidentiary hearing on these allegations and admitted he committed the violations. But he asked the court to reinstate his probation so he could seek substance abuse and mental health treatment, to impose intermediate sanctions, or to modify his underlying prison sentence.

The district court revoked Bishop's probation, noting the serious nature of both the underlying and the new crimes as well as the fact that some of Bishop's new crimes were committed against law enforcement officers.

On appeal, Bishop repeats the same argument he made to the district court. He claims the court should have reinstated probation or imposed a lesser sentence to allow him to obtain treatment for his additional substance abuse and mental health issues.

We review a district court's decision to revoke probation for an abuse of discretion. *State v. Coleman*, 311 Kan 332, 334, 460 P.3d 828 (2020). 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. Ingram*, 308 Kan. 1466, 1469, 430 P.3d 931 (2018). Bishop bears the burden of demonstrating an abuse of discretion by the district court. See *State v. Thomas*, 307 Kan. 733, 739, 415 P.3d 430 (2018).

Bishop claims no legal or factual error on appeal, and he admits the district court had the legal authority to revoke his probation. 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); *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). He simply argues the court abused its discretion in doing so.

We do not find the district court's decision to be unreasonable under the circumstances. Bishop was granted a dispositional departure to probation and, soon after, committed several new crimes. The district court did not abuse its discretion in revoking Bishop's probation and ordering him to serve his underlying sentences.

Affirmed.