

NOT DESIGNATED FOR PUBLICATION

No. 126,240

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

RICKY PHILLIP THOMAS-ORR,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; DAVID L. DAHL, judge. Opinion filed March 22, 2024.
Affirmed.

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

Before ARNOLD-BURGER, C.J., HURST and COBLE, JJ.

PER CURIAM: Ricky Phillip Thomas-Orr appeals the district court's revocation of his probation after he stipulated to several violations. We granted a motion for summary disposition under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). Finding no abuse of discretion by the district court, we affirm.

FACTUAL AND PROCEDURAL HISTORY

On August 21, 2019, as part of a plea agreement, Thomas-Orr pled guilty to felony possession of methamphetamine, felony possession of cocaine, misdemeanor possession of alprazolam, and misdemeanor possession of marijuana for offenses committed on March 7, 2018. Under the terms of the plea agreement, the parties agreed to recommend

the felony counts to run consecutive to each other with the two misdemeanor counts running concurrent. The parties also agreed to recommend a dispositional departure to probation based on: (1) the age of Thomas-Orr's prior convictions, (2) his willingness to participate in treatment; (3) his agreement that he would not seek modification of his sentence if his probation was ever revoked; and (4) agreement of the parties.

At sentencing, Thomas-Orr had a criminal history score of E. Under the Revised Kansas Sentencing Guidelines Act (KSGA), K.S.A. 2017 Supp. 21-6801 et seq., the presumptive sentence was probation, so there was no need for a dispositional departure. The district court sentenced Thomas-Orr to a controlling sentence of 28 months in prison to be followed by postrelease supervision for a term of 12 months; however, the district court suspended the sentence and placed him on probation for 12 months. The court approved that Thomas-Orr could request his probation be transferred to Colorado.

Over a two-year period, Thomas-Orr violated the terms of his probation on numerous occasions. On March 5, 2021, Thomas-Orr waived his right to an evidentiary hearing on the State's allegations that he violated his probation in 10 different ways. After Thomas-Orr chose not to deny any of the allegations for the purposes of the hearing, the district court ordered a 60-day jail sanction and extended his probation for a year.

On November 2, 2021, Thomas-Orr waived his right to an evidentiary hearing on the State's allegations that he violated his probation in eight different ways. After Thomas-Orr chose not to contest any of the violations, the district court ordered a 60-day jail sanction, extended his probation, and ordered him to residential treatment.

On October 4, 2022, Thomas-Orr again waived his right to an evidentiary hearing and admitted to six violations of the terms of his probation. The district court ordered a two-day sanction and extended his probation for another year.

On March 6, 2023, the district court held a hearing on the State's new allegations that Thomas-Orr violated the terms of his probation. In a warrant dated November 28, 2022, the State alleged that Thomas-Orr violated his probation by failing to report to his probation officer as directed on three different occasions and by failing to report his change of employment status to his probation officer within 24 hours. In a second warrant dated January 20, 2023, the State alleged that Thomas-Orr violated the terms of his probation by committing six new criminal offenses: possession of fentanyl; possession of methamphetamine; possession of cocaine, possession of marijuana; possession of drug paraphernalia; and interference with law enforcement. Additionally, the State alleged that Thomas-Orr violated the terms of his probation by being present in Colorado without his probation officer's permission.

Thomas-Orr waived his right to an evidentiary hearing, and he admitted to violating the terms of his probation by committing new crimes in Colorado, by failing to report as directed on three different occasions, by failing to report a change in employment, and by leaving the state without his probation officer's permission. Even so, Thomas-Orr requested that the court impose a 120-day jail sanction and reinstate his probation. Based on Thomas-Orr's repeated violations of the terms of his probation and his admission to the commission new criminal offenses, the State recommended the district court revoke Thomas-Orr's probation and order him to serve the underlying prison sentence.

At the conclusion of the hearing, the district court followed the State's recommendation to revoke Thomas-Orr's probation and ordered him to serve his underlying sentence. The district court's decision was based in part on Thomas-Orr's commission of new crimes in Colorado. The court found "[t]he justification for bypassing the additional sanctions [is] the commission of new crimes which have been admitted by you and which are set forth in the documentation that we received from Colorado, the journal entry."

Thomas-Orr filed a timely notice of appeal.

ANALYSIS

On appeal, Thomas-Orr contends that the district court erred by revoking his probation and sending him to prison rather than giving him another chance at treatment. In support, Thomas-Orr points to his statement at his probation revocation hearing that he had someone willing to give him a job, and his family needed him.

The general procedure for revoking a defendant's probation is governed by K.S.A. 22-3716. Once the State has presented evidence establishing a violation of the conditions of probation, the district court has discretion to revoke probation and impose the underlying sentence unless otherwise limited by statute. *State v. Tafolla*, 315 Kan. 324, 328, 508 P.3d 351 (2022). "A court abuses its discretion if the judicial decision (1) is arbitrary, fanciful, or unreasonable; (2) is based on an error of law; (3) or is based on an error of fact." 315 Kan. at 328. As the asserting party, Thomas-Orr must show that an abuse of discretion occurred. See 315 Kan. at 328.

Thomas-Orr does not dispute that he violated his probation by committing new offenses or that the district court had the legal authority to revoke his probation. See K.S.A. 22-3716(c)(7)(C) (authorizing probation revocation where offender commits a new felony or misdemeanor while on probation). He does not claim the district court's decision resulted from a legal or factual error, so we are left with determining whether no reasonable person would agree with the district court's decision to revoke his probation and impose the underlying sentence. See *State v. Brown*, 51 Kan. App. 2d 876, Syl. ¶ 4, 357 P.3d 296 (2015).

Although Thomas-Orr claims that the district court should have given him another chance at treatment while serving probation, we cannot conclude that no reasonable

person would have revoked his probation and imposed the underlying sentence under these circumstances.

The record shows that Thomas-Orr violated his probation on at least three prior occasions and served sanctions with each violation before being given another chance at probation. At the probation revocation hearing in March 2023, the State alleged that he had again violated the terms of his probation by committing new crimes, among other reasons, and he freely admitted to numerous violations including the commission of new crimes.

The record shows that the district court gave Thomas-Orr multiple opportunities to succeed on probation. Unfortunately, he failed to do so and continued to violate the terms of his probation. He has failed to show that no reasonable person would have revoked his probation given these facts. Accordingly, we find that the district court did not abuse its discretion.

Affirmed.