

NOT DESIGNATED FOR PUBLICATION

No. 124,776

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

KEVIN WAYNE BOLLINGER,
Appellant.

MEMORANDUM OPINION

Appeal from Saline District Court; JARED B. JOHNSON, judge. Opinion filed October 28, 2022.
Affirmed.

Submitted by the parties for summary disposition under K.S.A. 2021 Supp. 21-6820(g) and (h).

Before ARNOLD-BURGER, C.J., GARDNER and CLINE, JJ.

PER CURIAM: Kevin Wayne Bollinger appeals the district court's revocation of his probation in three cases. We granted Bollinger's motion for summary disposition under Supreme Court Rule 7.041A (2022 Kan. S. Ct. R. at 48). After a review of the record, we affirm.

FACTUAL AND PROCEDURAL HISTORY

Under a plea agreement with the State in April 2019, Bollinger pled no contest in two cases. In No. 18CR1022 (Case 1), Bollinger pled no contest to possession of methamphetamine, a severity level 6 felony, and interference with law enforcement, a misdemeanor. And in No. 19CR188 (Case 2), Bollinger pled no contest to failing to

appear, a misdemeanor. At a joint sentencing hearing a couple of months later, the district court sentenced Bollinger to 20 months' imprisonment in Case 1 and 6 months in jail in Case 2. Bollinger received a downward dispositional departure to probation for his felony and was granted probation for his misdemeanors.

Six months later, in December 2019, Bollinger pled no contest to possession of marijuana, a severity level 5 felony in No. 19CR568 (Case 3). The district court sentenced Bollinger to 20 months' imprisonment but granted a downward dispositional departure to probation. Pursuant to a plea agreement, the State agreed to not file a motion to revoke his probation in Cases 1 and 2 as a result of this new conviction.

Less than two months later, on February 13, 2020, Bollinger stipulated to violating the terms of his probation in Cases 1 and 2. The district court modified and extended Bollinger's probation for 12 months and ordered he serve 9 days in jail. Bollinger stipulated to more violations in the same cases 8 months later and the district court extended his probation term by 12 months.

One year later, in October 2021, Bollinger stipulated to violating the terms of his probation in all three cases. After noting Bollinger had "numerous probation violation hearings, three new convictions, [and] a history of nonreporting," the district court found Bollinger was not amenable to probation. The district court revoked Bollinger's probation in all three cases and relied on the downward dispositional departure exception for revoking probation on Bollinger's felonies in Cases 1 and 3. The district court ordered Bollinger to serve his underlying sentences on the felonies consecutively, but ordered his misdemeanor jail sentence in Case 2 to run concurrent with the felonies, for a controlling 40 months' imprisonment.

Bollinger timely appealed and his cases were consolidated for appeal.

ANALYSIS

On appeal, Bollinger asserts that the district court abused its discretion by unreasonably revoking his probation in all cases.

Once a probation violation is established, a district court may revoke probation and impose the probationer's underlying sentence unless it is required by statute to impose an intermediate sanction. *State v. Tafolla*, 315 Kan. 324, 328, 508 P.3d 351 (2022). See K.S.A. 2018 Supp. 22-3716 (requiring graduated sanctions before revocation in some cases). Here the district court did not have to impose an intermediate sanction before revoking Bollinger's felony probations because they were originally granted as the result of dispositional departures. K.S.A. 2018 Supp. 22-3716(c)(9)(B).

So here, the district court had discretion to determine whether to continue Bollinger's probation or to revoke it and require that he serve the underlying prison sentences. See *State v. Brown*, 51 Kan. App. 2d 876, 879-80, 357 P.3d 296 (2015). A court abuses its discretion when its exercise steps outside the applicable legal framework, relies on facts unsupported by substantial competent evidence, or constitutes arbitrary, capricious, or unreasonable conduct—meaning no reasonable person in the court's position would have made the same decision. *State v. Miles*, 300 Kan. 1065, 1066, 337 P.3d 1291 (2014). Bollinger bears the burden of establishing the court's exercise of discretion constituted an abuse. See *State v. Wells*, 289 Kan. 1219, 1227, 221 P.3d 561 (2009).

We find no error of law or fact. First, Bollinger stipulated that he violated the terms of his probation, so there was no dispute of fact. Second, the district court had the statutory authority to revoke Bollinger's probation because his original felony sentences resulted from dispositional departures. And the district court had the statutory authority to revoke Bollinger's probation on his misdemeanor under K.S.A. 2018 Supp. 22-

3716(b)(3)(B)(iii), which authorizes a district court to revoke probation when the offender commits a probation violation while on probation for a misdemeanor. So there was no error of law.

Bollinger argues the district court's revocation of his probation was still unreasonable because he suffers from a severe drug addiction and deserves another chance at probation to address his substance abuse issues. But Bollinger's substance abuse issues have been a concern from the inception of these cases and Bollinger never addressed these issues. Bollinger stipulated to violating his probation on all three occasions by failing to refrain from possessing, using, or trafficking illegal drugs. And moreover, Bollinger stipulated to disregarding the ordered treatment and counseling programs, which led to the revocation of his probation. Bollinger made the same argument to the district court, and it was not persuasive. We agree. We find that a reasonable person would have made the same decision as the district court under these facts.

Affirmed.