

NOT DESIGNATED FOR PUBLICATION

Nos. 124,953
124,954

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

LESSIE T. SMITH,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; BRUCE C. BROWN, judge. Opinion filed August 4, 2023.
Affirmed.

Kristen B. Patty, of Wichita, for appellant.

Boyd K. Isherwood, assistant district attorney, *Marc Bennett*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before ATCHESON, P.J., MALONE and PICKERING, JJ.

PER CURIAM: Lessie T. Smith appeals the district court's judgment revoking his probation and ordering him to serve his original prison sentence for his aggravated battery conviction, following his commission of new crimes while on probation. Finding no abuse of discretion, we affirm the district court's judgment.

FACTS

Smith has three pending cases in Sedgwick County. In 18CR16, Smith pleaded no contest to one count of aggravated battery. On May 8, 2018, the district court sentenced Smith to 27 months' imprisonment but placed him on probation for 24 months. A fundamental condition of Smith's probation was that he "[o]bey the laws of the United States, State of Kansas and any other jurisdiction."

Smith had problems complying with this condition of probation and was charged with committing crimes in two new cases. In 19CR364, Smith pleaded guilty and was convicted of criminal possession of a weapon by a felon, committed while he was on probation. In 19CR1260, Smith pleaded guilty and was convicted of one count of conspiracy to commit distribution of marijuana and one count of contributing to a child's misconduct or deprivation, committed while he was on probation. As a result of the new convictions, the district court found that Smith had violated his probation.

Smith moved for a downward departure sentence in the two new cases. At a joint sentencing hearing on January 6, 2021, the district court denied the departure motion from the bench. In 18CR16, the district court revoked Smith's probation and ordered him to serve his original sentence of 27 months' imprisonment. In 19CR364, the district court sentenced Smith to 18 months' imprisonment, consecutive to the sentence in 18CR16. In 19CR1260, the district court imposed a controlling sentence of 50 months' imprisonment, also consecutive to the sentence in 18CR16. Smith filed a notice of appeal in all three cases, and we granted Smith's motion to consolidate the cases on appeal.

ANALYSIS

Although Smith's notices of appeal state he is appealing the district court's decisions in 19CR364, 19CR1260, and 18CR16, his brief challenges only the district court's ruling revoking probation in 18CR16. An issue not briefed is considered waived or abandoned. *State v. Davis*, 313 Kan. 244, 248, 485 P.3d 174 (2021).

Smith does not dispute that the State established he violated a condition of his probation by committing new crimes. Once a probation violation is established, a district court has discretion to revoke probation unless the court is otherwise limited by statute. *State v. Tafolla*, 315 Kan. 324, 328, 508 P.3d 351 (2022). Smith does not claim that the district court's discretion was limited by statute. 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). The burden is on Smith to show that the district court abused its discretion. *State v. Crosby*, 312 Kan. 630, 635, 479 P.3d 167 (2021).

Smith points out that he had been on probation for 32 months by the date of the disposition hearing on January 6, 2021. He elaborates that while on probation he obtained employment at a wage of \$23 per hour, which was sufficient to support his children. Thus, Smith concludes it was inequitable and an abuse of discretion for the district court to revoke his probation and impose the original sentence. The State responds that because Smith committed several felony offenses while on probation, Smith fails to show that the district court abused its discretion.

We agree with the State. The mere facts that Smith had obtained gainful employment and had been on probation for a long time do not make the district court's decision arbitrary, fanciful, or unreasonable. This is especially true when Smith was convicted of multiple felonies while on probation, which he does not contest is a clear

violation of the terms of his probation. Smith also does not allege that the district court's decision was based on an error of fact or law. As a result, Smith has failed to show that the district court abused its discretion in revoking his probation.

Affirmed.