

NOT DESIGNATED FOR PUBLICATION

Nos. 125,114
125,115

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

TIMOTHY LEE ALBIN,
Appellant.

MEMORANDUM OPINION

Appeal from Franklin District Court; DOUGLAS P. WITTEMAN, judge. Opinion filed April 14, 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: Timothy Lee Albin appeals the revocation of his probation and imposition of his underlying prison sentences in two cases. We granted Albin's motion for summary disposition under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). The State did not respond. Based on the record, we find no abuse of discretion and affirm.

On October 10, 2020, in 20CR225, Albin pleaded no contest to one count of fleeing and eluding and one count of leaving the scene of an accident—the charges stemmed from a July 2020 incident during which Albin tried to escape law enforcement in a stolen car. The district court sentenced Albin to 8 months' imprisonment for fleeing

and eluding and a consecutive term of 6 months in jail for leaving the scene of an accident but granted 12 months' probation. As part of the sentence, the court also ordered Albin to pay \$1,000 in restitution and to write apologies to the officers involved.

On October 26, 2020, Albin also pleaded no contest to one count of battery against a corrections officer in 20CR330. The district court sentenced Albin to 52 months' imprisonment but granted a dispositional departure to probation for 36 months.

Around a year later, the district court held a probation violation hearing based on the State's allegation that Albin had committed a variety of probation violations. For these violations, the court extended Albin's probation through August 19, 2022.

The State later filed another motion to revoke Albin's probation, alleging that he had recently been charged with committing felony possession of stolen property and driving without a license. On March 3, 2022, Albin stipulated to violating the terms of his probation by committing the alleged crimes, and the district court revoked Albin's probation in each case. The district court ordered Albin to serve his original sentence in 20CR225 and a modified sentence of 40 months' imprisonment in 20CR330. Albin timely appealed and the cases have been consolidated on appeal.

Once a probation violation has been established, the decision to revoke probation is within the sound discretion of the district court. *State v. Coleman*, 311 Kan. 332, 334, 460 P.3d 828 (2020). A district court abuses its discretion when it steps outside the framework or fails to properly consider statutory standards. See 311 Kan. at 334. The burden is on Albin to show the district court abused its discretion. See *State v. Thomas*, 307 Kan. 733, 739, 415 P.3d 430 (2018).

When a district court decides to revoke probation and orders a defendant to serve an underlying sentence, the court must exercise its discretion within the statutory

framework of K.S.A. 2022 Supp. 22-3716. Generally, a district court must impose graduated intermediate sanctions before revoking an offender's probation. K.S.A. 2022 Supp. 22-3716(c)(1). But when a defendant commits a new felony or misdemeanor while on probation, the district court has the authority to revoke probation, regardless of whether it has previously imposed an intermediate sanction. See K.S.A. 2022 Supp. 22-3716(c)(7)(C). Albin stipulated to committing the new offense of felony possession of stolen property, along with other violations, while he was serving his probation. Because Albin committed a new offense while on probation, it was within the district court's discretion to order him to serve his underlying sentences. The district court showed leniency by modifying the sentence in 20CR330. Albin does not try to suggest that no reasonable person would agree with the court's decision.

We have reviewed the record and conclude that the district court acted within its discretion and within the guidelines set forth in K.S.A. 2022 Supp. 22-3716(c)(7)(C) when it revoked Albin's probation and ordered him to serve the original sentence in 20CR225 and a modified sentence in 20CR330.

Affirmed.