

NOT DESIGNATED FOR PUBLICATION

No. 125,207

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

VICKIE MARIE ZEIT,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Jackson District Court; NORBERT C. MAREK JR., judge. Opinion filed March 24, 2023. Affirmed.

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

Before GREEN, P.J., HILL and COBLE, JJ.

PER CURIAM: Vickie Marie Zeit appeals the revocation of her probation. We granted Zeit's motion for summary disposition pursuant to Supreme Court Rule 7.041A (2022 Kan. S. Ct. R. at 48). The State did not respond to Zeit's motion for summary disposition. Finding no abuse of discretion by the district court, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Zeit was charged with one count of distribution or possession with intent to distribute a controlled substance, one count of possession of methamphetamine, one count of possession of oxycontin, one count of possession of marijuana, and one count of

possession of drug paraphernalia. Following a plea agreement, Zeit pled no contest to the charge of distribution or possession with intent to distribute a controlled substance and the remaining charges were dismissed. The district court granted Zeit's motion for border box probation and sentenced her to 15 months underlying prison term with a probation term of 18 months.

Three months later, Zeit violated her probation conditions and accepted a three-day jail sanction after she voluntarily waived her rights to a probation violation hearing. Nine months later, based on allegations of probation violations from her community corrections officer and intensive supervision officer, the State moved to revoke Zeit's probation. Two months later, Zeit was arrested and charged with one count of possession of methamphetamine and one count of possession of drug paraphernalia, and the State amended its motion to revoke Zeit's probation.

During the probation violation hearing six months later, Zeit pled no contest to count 1 of the charged crimes and count 2 was dismissed. Two months later, the district court revoked Zeit's probation and imposed a modified sentence of two months based on the newly committed crimes. See K.S.A. 2022 Supp. 22-3716(c)(1)(A) and (7)(C).

Zeit timely appealed. Zeit's attorney on appeal moved for summary disposition of appeal under Rule 7.041A. This court granted the motion to decide the case without briefing.

#### ANALYSIS

On appeal, Zeit does not contest the findings of her violations by the district court during the probation violation hearing. She makes no arguments as to how or why the district court erred other than to cite authority that the decision to revoke probation rests

within the sound discretion of the district court. She solely contests that the district court erred by revoking her probation.

A district court's decision to revoke probation usually involves two steps: (1) A factual determination that the probationer has violated a condition of probation; and (2) a discretionary determination as to the appropriate disposition in light of the proven violations. *State v. Skolaut*, 286 Kan. 219, 227, 182 P.3d 1231 (2008). Once a probation violation is established, a district court has discretion to revoke probation 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. 2022 Supp. 22-3716(b) and (c) (requiring graduated sanctions before revocation in certain circumstances). Judicial discretion is abused when its decision is (1) arbitrary, fanciful, or unreasonable; (2) based on an error of law; or (3) based on an error of fact. *State v. Ingham*, 308 Kan. 1466, 1469, 430 P.3d 931 (2018). Zeit bears the burden of showing an abuse of discretion. See *State v. Thomas*, 307 Kan. 733, 739, 415 P.3d 430 (2018).

Zeit does not contend that the district court decision was based on an error of law or fact. Thus, abuse of discretion here will only be found if no reasonable person would agree with the district court's decision. *State v. Jones*, 306 Kan. 948, Syl. ¶ 7, 398 P.3d 856 (2017). Zeit fails to support her claim that the district court's decision to revoke her probation was unreasonable.

Though discretionary, sentencing disposition in a probation revocation is not without legal parameters. K.S.A. 2022 Supp. 22-3716 provides the legal framework for determining an authorized sentencing disposition following a probation violation. Pursuant to K.S.A. 2022 Supp. 22-3716(c)(7)(C), the district court may revoke an offender's probation regardless of previously imposed sanctions under K.S.A. 2022 Supp. 22-3716(c)(1) if the offender commits a new felony or misdemeanor while on probation.

Zeit does not contest that she had committed a new felony during her probation. As a result, the district court possessed the statutory authority to revoke Zeit's probation.

A reasonable person could agree with the district court's decision to revoke Zeit's probation. Zeit violated her probation conditions by committing a new felony. As such, the district court did not abuse its discretion in revoking Zeit's probation.

Affirmed.