

NOT DESIGNATED FOR PUBLICATION

Nos. 125,362
125,363

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

JOSE A. RODRIGUEZ,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; BRUCE C. BROWN, 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: Jose A. Rodriguez timely appeals the revocation of his probation. We granted his motion for summary disposition of his appeal under Supreme Court Rule 7.041A (2022 Kan. S. Ct. R. at 48). The State filed a response but did not contest summary disposition and requested this court to affirm the district court's decision. Finding no abuse of discretion by the district court, we affirm.

FACTUAL AND PROCEDURAL HISTORY

In June 2021, Rodriguez pleaded guilty to all charges in two criminal actions. In the first case, 2021-CR-000675 (No. 125,362 on appeal), Rodriguez pled guilty to aggravated domestic battery, theft, domestic battery, and two counts of aggravated burglary. In the second case, 2021-CR000760 (No. 125,363 on appeal), Rodriguez pled guilty to possession of an opiate, opium, narcotic, or certain stimulant; and criminal possession of a weapon. Although his sentence was presumptive imprisonment in both cases, on August 18, 2021, the district court granted Rodriguez a dispositional departure to 36 months' probation with underlying sentences totaling 286 months in prison followed by 6 months in jail. He was also ordered to pay a \$200 fine.

In January 2022, Rodriguez admitted to violating his probation by (1) failing to complete drug and alcohol treatment; (2) failing to complete his community service; (3) failing to obtain and maintain employment; (4) failing to pay court costs; (5) violating curfew on November 26, 2021; (6) tampering with a vehicle without owner permission and interference with a law enforcement officer on November 26, 2021; (7) possession of an opiate, opium, narcotic, or certain stimulant and interference with a law enforcement officer on November 28, 2021; (8) possession of marijuana on November 28, 2021; (9) failure to report to his probation officer on December 3, 2021; and (10) walking on a do not walk sign and interference with a law enforcement officer on December 8, 2021.

The district court revoked Rodriguez' probation and ordered that he serve the underlying sentences. The court based its decision on Rodriguez' lengthy criminal history, that the underlying sentences were presumptive imprisonment, and that Rodriguez had committed several new offenses while on probation. Rodriguez timely filed a notice of appeal.

ANALYSIS

A district court's decision to revoke probation involves two steps: (1) A factual determination that the probationer has violated a condition of probation; and (2) a discretionary determination of the appropriate disposition given the proven violations. *State v. Skolaut*, 286 Kan. 219, 227, 182 P.3d 1231 (2008). Here, Rodriguez admitted to having committed the probation violations and does not dispute that admission on appeal.

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. 2021 Supp. 22-3716(b) and (c) (requiring graduated sanctions before revocation in some cases). Here the district court did not have to impose an intermediate sanction before revoking Rodriguez' probation because he had committed new criminal offenses. See K.S.A. 2021 Supp. 22-3716(c)(7)(C).

This court next reviews whether the district court abused its discretion in revoking Rodriguez' probation. See *State v. Coleman*, 311 Kan. 332, 334, 460 P.3d 828 (2020). A court abuses its discretion when it 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). Rodriguez bears the burden of establishing the court abused its discretion in revoking his probation. See *State v. Thomas*, 307 Kan. 733, 739, 415 P.3d 430 (2018).

We have no hesitancy in finding the district court did not abuse its discretion. Less than four months after the district court granted Rodriguez a dispositional departure from lengthy presumptive prison sentences, Rodriguez committed 10 violations of his probation. A reasonable person could agree with the district court's decision to revoke

Rodriguez' probation considering these circumstances. As a result, the court did not abuse its discretion.

Affirmed.