

NOT DESIGNATED FOR PUBLICATION

Nos. 125,392
125,393

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

SCOTT L. NEFF,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; KEVIN M. SMITH, judge. Opinion filed March 24, 2023.
Affirmed.

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

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

PER CURIAM: Scott L. Neff appeals the revocation of his post-custody supervision. We granted Neff's motion for summary disposition under Kansas Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). The State responded to Neff's motion agreeing that disposition via summary judgment was appropriate. After a review of the record, we find the district court did not abuse its discretion and affirm.

Neff pleaded guilty to three counts of driving under the influence (DUI) in 2018, under a plea agreement with the State. This plea agreement disposed of the charges against Neff in two separate criminal cases. Consistent with the State's recommendations under this agreement, the district court sentenced Neff to 12 months in jail for each count,

with the three sentences running consecutive. The district court ordered Neff to serve the first 275 days of his sentences in jail and to serve the remainder on house arrest. The district court also imposed a 12-month post-custody supervision period for each count, with the three supervision periods running consecutive.

Among the conditions of his post-custody supervision period were the requirements that Neff not possess, use, or consume alcohol or any drugs without a prescription and that he submits to random breath, blood, and urine tests as directed.

After completing his required jail time, Neff was placed on house arrest, but soon violated the conditions of his release and was sent back to jail by the district court. Nevertheless, in revoking Neff's house arrest and committing him to jail, the district court erred in describing Neff's jail sentence. As a result, Neff's sentence was vacated on appeal by this court and his case remanded for resentencing. *State v. Neff*, No. 121,960 (order filed August 4, 2020).

At resentencing in 2021, the district court reimposed Neff's original sentence, with credit for time served, and placed him back on house arrest on the same conditions as before.

Several months later, the State filed a warrant alleging Neff had once again violated the conditions of his house arrest. At the hearing on these violations, Neff admitted to failing drug tests on five different occasions. The district court found that Neff violated the conditions of his post-custody supervision and ordered him to serve the remainder of his sentence in jail.

Neff timely appeals.

On appeal, Neff argues that the district court erred by revoking his post-custody supervision and ordering him to serve the remaining term of his sentence in jail. But as Neff concedes, the district court had discretion to do just this, given that he admitted to violating the conditions of his post-custody supervision. See K.S.A. 8-1567(b)(3) ("Any violation of the conditions of such supervision may subject such person to revocation of supervision and imprisonment in jail for the remainder of the period of imprisonment, the remainder of the supervision period, or any combination or portion thereof."); see also *State v. Castillo*, 54 Kan. App. 2d 217, Syl. ¶ 6, 397 P.3d 1248 (2017) (When a DUI offender violates the conditions of post-custody supervision, a district court has the discretion to revoke supervision.).

Thus, it appears that Neff is arguing that the district court abused its discretion in revoking his post-custody supervision and ordering him to serve the remaining term of his sentence in jail. A district court abuses its discretion when: (1) no reasonable person would take the view adopted by the judge; (2) a ruling stems from an error of law; or (3) substantial competent evidence does not support a finding of fact on which the exercise of discretion is based. The burden of proving an abuse of discretion is on the party alleging the abuse. *State v. McLinn*, 307 Kan. 307, 347-48, 409 P.3d 1 (2018).

Since a reasonable person could agree with the course of action taken by the district court, the district court did not abuse its discretion in ordering Neff to serve the remainder of his sentence in jail.

Accordingly, we affirm the district court's decision.

Affirmed.