

NOT DESIGNATED FOR PUBLICATION

No. 125,423

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

RICHARD LEE GRIFFIN,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Saline District Court; RENEE S. YOUNG, judge. Opinion filed December 29, 2023. Affirmed.

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

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

PER CURIAM: Richard Lee Griffin appeals the Saline County District Court's decision to revoke his probation and impose his underlying sentences in five criminal cases. He contends the district court abused its judicial discretion because no reasonable person would agree with that decision. After a careful review of the record, we find the district court acted within its lawful authority and sound discretion and, therefore, affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This consolidated appeal arises from Griffin's convictions and sentences in a series of Saline County criminal cases: 19 CR 909; 20 CR 693; 20 CR 725; 20 CR 763; and 21

CR 49. In January 2020, Griffin pleaded guilty to felony possession of marijuana in 19 CR 909. The district court sentenced him to 20 months' imprisonment with 12 months' postrelease supervision, suspended to 12 months' supervised probation. Griffin's probation did not go well.

Griffin was later charged with several new crimes in three separate cases for acts committed in July 2020. In 20 CR 693, Griffin pleaded no contest to one count each of felony possession of marijuana, misdemeanor battery on a law enforcement officer, and misdemeanor violation of a protective order. In 20 CR 725, Griffin pleaded no contest to misdemeanor theft. In 20 CR 763, Griffin pleaded no contest to one count each of felony possession of marijuana and misdemeanor criminal damage to property.

In 20 CR 763, the district court sentenced Griffin to 30 months' imprisonment for possession of marijuana with a concurrent jail sentence of 6 months for criminal damage to property. In 20 CR 693, the district court sentenced Griffin to 20 months' imprisonment for possession of marijuana with concurrent 12-month jail sentences for battery on a law enforcement officer and violation of a protective order. In 20 CR 725, the district court sentenced Griffin to 12 months in jail for misdemeanor theft. The district court ordered Griffin's sentences in 20 CR 763 and 20 CR 693 run consecutive to one another and consecutive to his previous sentence in 19 CR 909, with his sentence in 20 CR 725 running concurrent with all three. The district court granted Griffin's motion for downward dispositional departure and suspended his sentences in 20 CR 693, 20 CR 725, and 20 CR 763 to 12 months' supervised probation.

In June 2021, while still on probation in the four previous cases, Griffin pleaded no contest to felony possession of marijuana in 21 CR 49. The district court sentenced him to 34 months' imprisonment with 12 months' postrelease supervision consecutive to all four of his previous sentences, again granted a downward dispositional departure, and suspended his sentence to 12 months' supervised probation. At the same hearing, Griffin

stipulated to violating the terms of his probation in his four previous cases. The district court revoked Griffin's probation and ordered him to remain in custody until he could be admitted to inpatient drug and alcohol treatment at which time his probation would be reinstated for an additional 12 months.

In February 2022, Griffin again appeared before the district court due to probation violations. Griffin admitted to violating the terms of his probation by failing to complete the court-ordered inpatient drug treatment. The State asked the district court to revoke Griffin's probation and impose his underlying sentences. Griffin asked the district court to give him another chance at probation or, in the alternative, to modify his underlying sentences to a lesser term of imprisonment. The district court found Griffin violated his probation by failing to complete drug treatment. The district court revoked Griffin's probation and ordered him to serve his underlying sentences, having concluded he was not amendable to probation and would likely again violate his probation if given another chance. But the district court modified Griffin's sentences so 19 CR 909 would run concurrent with the sentences in 20 CR 693, 20 CR 725, and 20 CR 763, yielding a controlling 84-month term of imprisonment.

Griffin appealed and filed a motion for summary disposition under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). We have granted the motion.

#### ANALYSIS

For his sole claim on appeal, Griffin asserts the district court abused its judicial discretion in refusing to reinstate his probation. Given Griffin's criminal history, the district court's decision to place Griffin on probation was an act of judicial leniency afforded him as a privilege rather than a right. See *State v. Gary*, 282 Kan. 232, 237, 144 P.3d 634 (2006). A district court's decision to revoke probation entails two steps: (1) a factual determination, established by a preponderance of the evidence, that the

probationer has violated a condition of probation; and (2) a discretionary determination as to the appropriate disposition in light of any proved violation. *State v. Skolaut*, 286 Kan. 219, Syl. ¶ 4, 182 P.3d 1231 (2008) (components of probation revocation); *State v. Gumfory*, 281 Kan. 1168, 1170, 135 P.3d 1191 (2006) (preponderance of evidence standard governs proof of probation violation).

A defendant's admission of an alleged violation satisfies the first step. Here, Griffin admitting violating his probation, obviating the State's obligation to prove a violation. See *Gumfory*, 281 Kan. at 1170; *State v. Inkelaar*, 38 Kan. App. 2d 312, 315, 164 P.3d 844 (2007). After a violation has been established, the decision to reinstate probation or to revoke and incarcerate the probationer rests within the sound discretion of the district court subject to some statutory limitations. *State v. Tafolla*, 315 Kan. 324, 328, 508 P.3d 351 (2022); see K.S.A. 2022 Supp. 22-3716(c)(1), (7). Judicial discretion has been abused if a decision is arbitrary, fanciful, or unreasonable or rests on a substantive error of law or a material mistake of fact. *State v. Meeks*, 307 Kan. 813, 816, 415 P.3d 400 (2018). Griffin carries the burden of showing that the district court abused its discretion. See *State v. Crosby*, 312 Kan. 630, 635, 479 P.3d 167 (2021).

Griffin effectively concedes the district court understood the relevant facts and the governing law. Because Griffin had been placed on probation as a downward dispositional departure from a presumptive sentence of incarceration, the district court could revoke without first imposing a lesser sanction. See K.S.A. 2022 Supp. 22-3716(c)(7)(B). So Griffin is left to argue no district court reasonably would have sent him to prison for 84 months in comparable circumstances. He fashions his argument around two contentions: (1) Possession of marijuana is lawful in neighboring states, and but for his lack of financial means he could have left Kansas and taken up residence in one of them; and (2) the cost to house a person in the state prison system is about \$37,000 a year.

The throughline in Griffin's criminal problems is his unwillingness or inability to refrain from possessing and using marijuana. And given a national trend toward reducing or eliminating criminal penalties for possession of personal use quantities of marijuana, we suppose some district courts might have continued Griffin on probation or substantially reduced his prison sentence. By the same token, however, Griffin's continuing possession of marijuana—constituting repeated felonies—evinced an obdurate refusal to conform to Kansas law. Moreover, he committed property crimes and in one instance had unlawful physical contact with a law enforcement officer. And he refused to follow a court order for substantive abuse treatment.

Griffin's course of conduct over nearly two and a half years showed him to be a scofflaw and possibly incorrigible. We comfortably conclude more than a few district courts would have found those undesirable characteristics warranted a substantial prison sentence as a means of deterrence and rehabilitation. The circumstances here invite a range of reasonable ways to have dealt with Griffin and his serial criminality—that's the essence of judicial discretion. See *McMahan v. Toto*, 256 F.3d 1120, 1129 (11th Cir. 2001) ("[U]nder an abuse of discretion standard there will be circumstances in which we would affirm the district court whichever way it went."). The district court did not act outside the broad latitude of that discretion.

Affirmed.