

NOT DESIGNATED FOR PUBLICATION

No. 125,648

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

MONICA ROSE MORALES,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Geary District Court; RYAN W. ROSAUER, judge. Opinion filed April 21, 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: Monica Rose Morales appeals from the revocation of her probation. We granted Morales' unopposed motion for summary disposition in lieu of briefs under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). After reviewing the record, we affirm.

On December 18, 2020, pursuant to a plea agreement, Morales pleaded no contest to one count of possession of methamphetamine in violation of K.S.A. 2019 Supp. 21-5706, a drug severity level 5, nonperson felony. Under the plea agreement, the State agreed to (1) dismiss another pending criminal case against Morales, (2) file no additional charges arising out of the same transactions forming the basis of the State's complaint in this case, and (3) open sentencing.

Morales failed to appear for sentencing, so the district court issued a bench warrant authorizing her arrest. When she appeared a few weeks later, the district court sentenced her to a 12-month presumptive probation term with an underlying 20-month prison term and 12 months of postrelease supervision based on her criminal history score of E.

On September 8, 2021, the State moved to revoke Morales' probation. Morales eventually stipulated to the alleged violations, which included failing to (1) report as directed, (2) participate in treatment services, (3) gain and maintain fulltime employment, and (4) report her new place of residence to her supervision officer. The district court revoked Morales' probation, reinstated a 12-month probation term, and ordered a three-day dip sanction in jail with time served.

On December 10, 2021, the State moved again to revoke Morales' probation. The affidavit supporting this motion stated that Morales failed to (1) report as directed, (2) participate in treatment services, (3) gain and maintain fulltime employment, (4) report her new place of residence to her supervision officer, and (5) submit to drug testing as requested by a community corrections officer. Morales stipulated to the first alleged violation, but the State did not consent to her stipulation because Morales did not stipulate to the remaining four violations.

The district court held a contested probation revocation hearing on September 15, 2022. The State presented one witness—Joanna Lee—who served as Morales' intensive supervision officer (ISO) after her previous probation revocation in November 2021. Lee testified that Morales had not complied with the terms and conditions of her probation. Lee stated that since Morales' probation was reinstated on November 8, 2021, Morales reported to her only once, on November 15, 2021, and never returned. Lee testified that Morales failed to attend required drug testing on November 16, 22, and 30. Lee also testified that Morales did not have a job when she met with her, she failed to attend the

recommended job club to help her find a job, she failed to start drug treatment, and she failed to report her change in residence.

Morales testified on her own behalf. She explained that she was not incarcerated from the time probation was granted on November 8, 2021, until her subsequent arrest on January 6, 2022. Morales testified that she was detained at the Shawnee County Jail for a different case from January 2022 until she was sentenced and granted probation on March 30, 2022. At the time of the hearing, she was being detained at the Shawnee County Department of Corrections after being arrested again on May 10, 2022, for a different case. She testified that her earliest release date would be September 2023. Morales agreed that she failed to attend some required drug tests and had no contact with Lee or any probation officer after November 17, 2021, until January 6, 2022. Yet Morales claimed that before her incarceration in January 2022, she tried to get in contact with the job club director and was attempting to obtain employment in the cosmetology field.

At the end of the hearing, the State asked the district court to revoke Morales' probation and remand her to serve her underlying prison sentence.

After considering the motion and affidavit, the statements of counsel, and the evidence presented at the hearing, the district court found that the State proved the probation violations listed in the affidavit by a preponderance of the evidence. The district court thus revoked Morales' probation and ordered service of a 12-month modified prison term.

Morales filed a timely notice of appeal.

We review a district court's revocation of an offender's probation for an abuse of discretion. *State v. Coleman*, 311 Kan. 332, 334, 460 P.3d 828 (2020). Judicial discretion is abused only if (1) no reasonable person would take the view adopted by the district

court; (2) it is based on an error of law; or (3) it is based on an error of fact. *State v. Thomas*, 307 Kan. 733, 739, 415 P.3d 430 (2018). Morales bears the burden of showing such abuse of discretion. 307 Kan. at 739.

On appeal, Morales argues the district court abused its discretion in revoking her probation and ordering service of a prison sentence. Morales does not explain why she believes the court erred, nor does she challenge the court's findings that she violated her probation.

After Morales' second probation violation and previous receipt of sanctions for her first probation violation, the district court was authorized under K.S.A. 2019 Supp. 22-3716(c)(1)(C) to revoke Morales' probation and impose a prison sentence. As for the factual basis supporting the revocation, Morales continued the same behavior after her intermediate sanctions which caused her to suffer those sanctions. She admitted to some violations supporting the State's second motion to revoke, and her ISO's testimony provided a factual basis for the others, which Morales does not challenge. We cannot say no reasonable person would agree with the district court's finding that Morales would not be successful on probation.

Upon review of the record, we find that the district court did not abuse its discretion in its decision to revoke Morales' probation and impose a modified 12-month prison sentence.

Affirmed.