

NOT DESIGNATED FOR PUBLICATION

No. 125,675

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

JOHNATHAN EVAN THOMASON,
Appellant.

MEMORANDUM OPINION

Appeal from Sherman District Court; SCOTT SHOWALTER, judge. Opinion filed July 14, 2023.
Affirmed.

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

Before ARNOLD-BURGER, C.J., MALONE and SCHROEDER, JJ.

PER CURIAM: Johnathan Evan Thomason timely appeals the district court's decision to revoke his probation and impose his underlying 30-month prison sentence. We granted his motion for summary disposition in lieu of briefs under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). The State did not respond. We observe no abuse of discretion, and we affirm.

Thomason pled guilty to one count of possession of heroin for acts committed in July 2019. Thomason's criminal history placed him in the border box sentencing range. In November 2020, the district court sentenced Thomason to 30 months of imprisonment

and then granted him supervised probation for a term of 12 months. Thomason, as a resident of Colorado, was initially allowed to have his probation supervised in Colorado.

Probation did not go well. From November 2020 through January 2021, Thomason missed multiple appointments with his intensive supervision officer (ISO) in Colorado. Thomason also changed his residences and phone number without prior authorization from his ISO. After failing to report in Colorado, Thomason's probation supervision was returned to Kansas community corrections. Thomason contacted his Kansas ISO, Bailey Rose, to state he could not report on the scheduled date because of financial and transportation issues. The date was rescheduled, and Thomason failed to report. The State moved to revoke Thomason's probation and requested a bench warrant for his arrest, alleging he had absconded, failed to report to community corrections, and failed to notify his ISO of his current home address.

At the probation revocation hearing in February 2022, Rose testified Thomason was an absconder because he failed to maintain contact with his ISOs in Colorado and Kansas. Thomason responded he was in jail in Colorado and unable to report for an unstated amount of time. Rose testified Thomason never notified her of his arrest and inability to report. The district court revoked his probation and imposed the underlying prison sentence.

Thomason now argues the district court abused its discretion in revoking his probation and imposing his underlying prison sentence because sanctions remained a viable alternative.

"Once a probation violation has been established, the district court's decision to revoke the offender's probation and impose the original sentence is discretionary unless otherwise limited by statute. This court reviews the propriety of [that decision] for an abuse of discretion. A court abuses its discretion if the judicial decision (1) is arbitrary,

fanciful, or unreasonable; (2) is based on an error of law; (3) or is based on an error of fact. [Citations omitted.]" *State v. Tafolla*, 315 Kan. 324, 328, 508 P.3d 351 (2022).

Because Thomason committed his crimes in July 2019, the district court was required to exercise its discretion by imposing intermediate sanctions within the statutory framework of K.S.A. 2019 Supp. 22-3716. But upon a finding by the district court that Thomason absconded from supervision, the district court was free to bypass intermediate sanctions. See K.S.A. 2019 Supp. 22-3716(c)(7)(D).

A probationer absconds from supervision by intentionally evading the legal process. A "pattern of violations" provides substantial competent evidence that a probationer acted with the requisite intent to evade and thereby abscond. *State v. Dooley*, 313 Kan. 815, 820-21, 491 P.3d 1250 (2021).

Thomason bears the burden of establishing an abuse of discretion. See *Tafolla*, 315 Kan. at 328. Thomason fails to persuade us no reasonable person would have taken the same position as the district court. Thomason did not contest the allegations made by the State reflecting he missed multiple appointments with his supervising officers and failed to notify his supervising officers of his whereabouts. Nor does Thomason dispute his pattern of conduct supports the inference he absconded from probation supervision. Because Thomason absconded from supervision on probation, it was within the district court's discretion to revoke his probation without first imposing intermediate sanctions.

We observe no error of fact or law underlying the district court's decision. The district court acted within its sound discretion and the statutory guidance set forth in K.S.A. 2019 Supp. 22-3716(c)(7)(D) to revoke Thomason's probation and impose his underlying prison sentence of 30 months.

Affirmed.