

NOT DESIGNATED FOR PUBLICATION

No. 125,948

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

JAKE FECHNER,
Appellant.

MEMORANDUM OPINION

Appeal from Dickinson District Court; BENJAMIN J. SEXTON, judge. Opinion filed July 28, 2023.
Affirmed.

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

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

PER CURIAM: Jake Fechner appeals the district court's revocation of his probation and imposition of his modified prison sentence. Fechner moved for summary disposition in lieu of briefs under Kansas Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). The State did not respond. Finding no error, we affirm the district court' judgment.

Fechner pled guilty to one count of possession of methamphetamine, in violation of K.S.A. 2021 Supp. 21-5706(a) and (c)(1), a drug severity level 5 nonperson felony, for conduct committed on January 5, 2022. In exchange for his plea, the State agreed to

dismiss four other charges with prejudice and not to oppose Fechner's probation request. On March 23, 2022, the district court sentenced Fechner to 30 months' imprisonment but granted probation for 18 months with drug treatment under K.S.A. 2021 Supp. 21-6824(b)—known as Senate Bill No. 123 drug treatment.

Less than a month later, the State moved to revoke Fechner's probation, and the district court later issued a warrant for Fechner's arrest for failure to report and failure to complete treatment. Fechner was arrested and bonded out before appearing at an August 2022 hearing to revoke probation, where he requested an attorney. The district court allowed him to continue on bond. But a couple of weeks later, Fechner failed to appear at the probation revocation hearing, so the district court ordered Fechner's bond forfeited and issued a warrant for his arrest. In late August 2022, Fechner's intensive supervision officer (ISO) filed an addendum affidavit stating Fechner failed to remain crime free because he was arrested on June 27, 2022, in Saline County for driving while cancelled, suspended, or revoked and having no proof of insurance. Fechner was served a bench warrant in Geary County, but he bonded out. About a month later, Fechner's ISO submitted another affidavit notifying the district court that Fechner failed to report for his office appointment and recommending that Fechner's bond and probation be revoked.

At a hearing on December 14, 2022, Fechner stipulated to the probation violations stated in the affidavits. The district court then revoked Fechner's probation and imposed a modified sentence of 20 months' imprisonment, based on its finding that Fechner violated his probation conditions by committing a new crime and that Fechner's welfare would not be served by a sanction. Fechner filed a timely notice of appeal.

On appeal, Fechner argues the district court erred by revoking his probation and imposing a prison sentence. When the State has established a probationer has violated the terms of probation, the decision to revoke is within the sound discretion of the district court, unless limited by statute. *State v. Tafolla*, 315 Kan. 324, 328, 508 P.3d 351 (2022).

Because Fechner stipulated to the probation violations, this court only needs to determine whether the district court's decision to revoke probation and impose a prison sentence was an abuse of discretion. See *State v. Brown*, 51 Kan. App. 2d 876, 879-80, 357 P.3d 296 (2015). To find an abuse of discretion, the judicial action must be deemed (1) arbitrary, fanciful, or unreasonable; (2) based on an error of law; or (3) based on an error of fact. *State v. Levy*, 313 Kan. 232, 237, 485 P.3d 605 (2021). Fechner bears the burden to show an abuse of discretion. See *State v. Crosby*, 312 Kan. 630, 635, 479 P.3d 167 (2021).

When a district court decides to revoke probation and impose a prison sentence, K.S.A. 2022 Supp. 22-3716 provides the statutory framework for the court to operate within. Generally, a district court must impose intermediate sanctions before revoking an offender's probation. K.S.A. 2022 Supp. 22-3716(b)(3)(A). But a district court may revoke probation without imposing intermediate sanctions when the welfare of the offender will not be served by such sanction or the offender commits a new crime while on probation. K.S.A. 2022 Supp. 22-3716(c)(7)(A) and (C). Once a district court revokes probation, it can require the "violator to serve the sentence imposed, or any lesser sentence." K.S.A. 2022 Supp. 22-3716(c)(1)(C).

The district court found that Fechner's welfare would not be served by imposing an intermediate sanction, and he does not challenge the sufficiency of that finding on appeal. See K.S.A. 2022 Supp. 22-3716(c)(7)(A). The district court also found that Fechner committed a new crime while on probation. See K.S.A. 2022 Supp. 22-3716(c)(7)(C). Thus, the district court's decision to revoke Fechner's probation was within the statutory framework and was legally and factually appropriate. Under these circumstances, a reasonable person could agree that the judicial action was not arbitrary, fanciful, or unreasonable. Fechner's probation never got off the ground. Plus, the district court showed leniency by modifying Fechner's sentence to 20 months' imprisonment. We

conclude the district court did not abuse its discretion by revoking Fechner's probation and ordering him to serve a modified prison sentence.

Affirmed.