

NOT DESIGNATED FOR PUBLICATION

No. 125,997

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

MICHAEL JOSEPH HOWARD,
Appellant.

MEMORANDUM OPINION

Appeal from Saline District Court; RENE S. YOUNG, judge. Submitted without oral argument.
Opinion filed December 8, 2023. Affirmed.

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

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

PER CURIAM: Michael Joseph Howard appeals the district court's revocation of his probation and order to serve his original sentence. We granted Howard's motion for summary disposition under Kansas Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). Finding no abuse of discretion, we affirm the district court's judgment.

In September 2020, Howard pleaded no contest in case No. 19CR1002 to one count of possession of methamphetamine committed in November 2019. On October 28, 2020, the district court sentenced Howard to 34 months' imprisonment but granted his motion for a dispositional departure to 12 months' probation.

The State later moved to modify Howard's probation and extend it for six months on the ground, in part, that he had failed to refrain from drug and alcohol usage. Howard waived his rights associated with a modification hearing and agreed to the probation extension, which the district court granted on October 25, 2021.

On February 11, 2022, the State moved to revoke Howard's probation because he had violated the law and used drugs or alcohol. On September 16, 2022, Howard pleaded no contest in case No. 22CR111 to one count of possession of methamphetamine. At the plea hearing, Howard stipulated that he violated his probation in case No. 19CR1002 by violating the law and for using drugs or alcohol. Howard moved to modify his sentence in case No. 19CR1002 if his probation was revoked. Howard argued that due to his age, mental health, and substance abuse, his underlying prison term should be reduced or modified to run concurrent with the sentence imposed in case No. 22CR111.

The district court held a joint sentencing and revocation hearing on December 19, 2022. In case No. 22CR111, the district court imposed a presumptive sentence of 34 months' imprisonment, consecutive to Howard's sentence in case No. 19CR1002. In case No. 19CR1002, Howard again argued that his age, mental health, and substance abuse compelled that his sentence be modified to run concurrent with the sentence imposed in case No. 22CR111. The district court denied Howard's motion to modify, revoked his probation, and ordered him to serve the original 34-month prison sentence. Howard appealed. This appeal addresses only the probation revocation in case No. 19CR1002.

On appeal, Howard claims "the district court erred when it revoked his probation and imposed his underlying prison sentence without granting modification." Howard acknowledges that the district court was statutorily authorized to revoke his probation. Howard focuses on the district court's failure to modify his sentence and argues that "given his age, mental health issues, and small amount of drugs involved in the case, no reasonable person would have agreed with the district court's decision to revoke [his]

probation and order [that] he serve the entirety of his underlying 34-month sentence." The State has not responded to Howard's motion for summary disposition.

The procedure for revoking a defendant's probation is governed by K.S.A. 2022 Supp. 22-3716. Generally, once the State has presented evidence of a violation of the conditions of probation, the decision to revoke probation rests within the district court's sound discretion. *State v. Coleman*, 311 Kan. 332, 334, 460 P.3d 828 (2020). A judicial action constitutes an abuse of discretion if (1) it is arbitrary, fanciful, or unreasonable; (2) it is based on an error of law; or (3) it is based on an error of fact. *State v. Ingram*, 308 Kan. 1466, 1469, 430 P.3d 931 (2018). Howard bears the burden of showing the district court abused its discretion. See *State v. Thomas*, 307 Kan. 733, 739, 415 P.3d 430 (2018).

Howard is correct that upon revoking a defendant's probation, the district court can order the defendant to serve the original sentence "or any lesser sentence." K.S.A. 2022 Supp. 22-3716(c)(1)(C). An appellate court reviews the district court's decision to deny a defendant's request for a modified sentence upon the revocation of probation for an abuse of discretion. *State v. Reeves*, 54 Kan. App. 2d 644, 648, 403 P.3d 655 (2017).

The district court showed leniency by granting Howard's request for probation in the first place. The district court then extended Howard's probation for six months on his first probation violation. Still, Howard violated his probation again by committing the new crime of possession of methamphetamine. Howard does not elaborate how his "mental health issues" contributed to his crimes. Based on the record, we cannot say that the district court's revocation of Howard's probation was arbitrary, fanciful, or unreasonable or that it resulted from a legal or factual mistake. Although the district court could have modified Howard's sentence upon revoking his probation, Howard has failed to show that the district court abused its discretion by denying this request.

Affirmed.