

NOT DESIGNATED FOR PUBLICATION

Nos. 126,065
126,066

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

JESSIE A. CARSON,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; TYLER J. ROUSH, judge. Opinion filed July 21, 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: Jessie A. Carson timely appeals the district court's revocation of his probation in two cases. We consolidated these cases on appeal and granted Carson's motion for summary disposition under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). The State does not contest Carson's motion for summary disposition.

Carson now contends the district court abused its discretion by revoking his probation due to his need for medical care and desire to participate in treatment for his addiction. Given the specific facts of these cases, we find the district court did not abuse its discretion in revoking Carson's probation. We affirm the district court.

FACTS

In 20CR1176, Carson pled guilty to one count of criminal threat, two counts of aggravated domestic battery, and one count of aggravated intimidation of a witness or victim for crimes committed in May 2020. In 20CR5276, Carson pled guilty to one count of aggravated domestic battery and one count of interference with law enforcement for crimes committed in December 2020. In keeping with Carson's plea agreement, the district court imposed an underlying prison sentence in both cases and then granted Carson a downward dispositional departure to 24 months' probation.

Probation did not go well. About one month after sentencing, Carson did not contest the State's allegations he violated the terms of his probation by committing new crimes. The district court reinstated Carson's probation upon serving a three-day jail sanction.

Six months after sentencing, the district court revoked Carson's probation after he admitted to using methamphetamine, tested positive for methamphetamine and fentanyl, and failed to provide proof of attending drug and alcohol treatment. The district court cited K.S.A. 2022 Supp. 22-3716(c)(7)(B) in its revocation order, noting that revocation was permitted because Carson's original sentence was the result of a dispositional departure.

ANALYSIS

After evidence of a probation violation is presented, the decision to reinstate probation or to revoke and incarcerate the probationer rests within the sound discretion of the district court subject to statutory limitations. We review such a decision for any abuse of that discretion. A district court abuses its discretion if its action is arbitrary, fanciful, or unreasonable; or if it is based on an error of law or fact. *State v. Tafolla*, 315 Kan. 324,

328, 508 P.3d 351 (2022). Carson has the burden to show an abuse of discretion. See *State v. Thomas*, 307 Kan. 733, 739, 415 P.3d 430 (2018). Carson fails to meet his burden.

Once a district court finds a probation violation has occurred, it must impose intermediate sanctions before revoking probation unless a statutory exception exists. K.S.A. 2022 Supp. 22-3716(c). Here, the district court, in keeping with our statutory guidelines, could revoke probation without imposing intermediate sanctions because probation "was originally granted as the result of a dispositional departure." K.S.A. 2017 Supp. 22-3716(c)(9)(B); see *State v. Coleman*, 311 Kan. 332, 337, 460 P.3d 828 (2020) (K.S.A. 2017 Supp. 22-3716[c][9][B] applies to probationers who committed offenses on or after July 1, 2017).

Carson violated the terms of his probation twice within six months of sentencing. We observe no abuse of discretion.

Affirmed.