

NOT DESIGNATED FOR PUBLICATION

No. 126,228

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

JOHN TYREE BAKER,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court, DAVID J. KAUFMAN, judge. Opinion filed December 1, 2023. Affirmed.

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

Before CLINE, P.J., WARNER and PICKERING, JJ.

PER CURIAM: John Tyree Baker timely appeals the revocation of his probation. We granted Baker's motion for summary disposition of his appeal under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). The State responded and did not contest Baker's motion for summary disposition. Finding no abuse of discretion by the district court, we affirm.

In March 2022, Baker pled guilty in Sedgwick County District Court to possession of methamphetamine, a severity level 5 nonperson felony, for acts committed in November 2018. The court granted Baker's motion for dispositional departure from

presumptive prison and sentenced him to 12 months on probation with an underlying sentence of 37 months in prison.

In September 2022, a warrant was issued alleging Baker violated the conditions of his probation by committing new crimes and using alcohol. On February 2, 2023, the district court held a probation revocation hearing alongside a preliminary hearing involving Baker's new criminal charges. The State presented evidence that, in September 2022, Baker drank alcohol, violated a protection from abuse order, punched a victim in her face several times, and then forced her to travel with him by threatening to end her life or inflict additional violence. Baker presented no evidence. The district court noted that it was not required to impose an intermediate sanction because Baker was granted probation as a result of a dispositional departure.

The district court found that Baker violated probation by committing new crimes and revoked his probation, imposing the underlying prison sentence of 37 months. Baker timely appeals.

A district court's decision to revoke probation involves two steps: (1) a factual determination that the probationer has violated a condition of probation; and (2) a discretionary determination of the appropriate disposition given the proved violations. *State v. Horton*, 308 Kan. 757, 761, 423 P.3d 548 (2018). The State must establish that the probationer violated the terms of probation by a preponderance of the evidence—or that the violation is more probably true than not true. *State v. Lloyd*, 52 Kan. App. 2d 780, 782, 375 P.3d 1013 (2016). And appellate courts review the district court's factual findings for substantial competent evidence. *State v. Dooley*, 313 Kan. 815, 819, 491 P.3d 1250 (2021).

Once a probation violation is established, a district court may revoke probation and impose the probationer's underlying sentence unless it is required by statute to

impose an intermediate sanction. *State v. Tafolla*, 315 Kan. 324, 328, 508 P.3d 351 (2022); see K.S.A. 2022 Supp. 22-3716(c)(1) (requiring graduated sanctions before revocation in some cases). In this matter, the district court was not required to impose an intermediate sanction before revoking Baker's probation for two reasons: (1) Baker committed new crimes while on probation; and (2) he originally received probation as the result of a dispositional departure. See K.S.A. 2018 Supp. 22-3716(c)(8)(A), (9)(B).

Once a probation violation and an exception to the intermediate sanctions requirement are established, the district court has discretion in determining whether to continue the probation or to revoke and require the defendant to serve the underlying prison sentence. See *State v. Brown*, 51 Kan. App. 2d 876, 879-80, 357 P.3d 296 (2015). A court abuses its discretion when it makes an error of fact or law or when its actions constitute arbitrary, capricious, or unreasonable conduct—meaning no reasonable person in the court's position would have made the same decision. *State v. Miles*, 300 Kan. 1065, 1066, 337 P.3d 1291 (2014).

Here, the State proved by a preponderance of the evidence that Baker committed several new violent crimes and used alcohol in violation of the terms of his probation just a few months after receiving a dispositional departure. The district court did not abuse its discretion in revoking Baker's probation as a reasonable person would have made the same decision.

Affirmed.