

NOT DESIGNATED FOR PUBLICATION

No. 126,298

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

BRYAN X. ROBLES,
Appellant.

MEMORANDUM OPINION

Appeal from Wyandotte District Court; JENNIFER L. MYERS, judge. Opinion filed March 22, 2024. Affirmed.

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

Before ARNOLD-BURGER, C.J., HURST and COBLE, JJ.

PER CURIAM: Bryan X. Robles appeals his sentence following his conviction of possession of cocaine. We granted Robles' motion for summary disposition under Kansas Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). The State has filed no response. Finding no error, we affirm.

FACTUAL AND PROCEDURAL HISTORY

Robles pled guilty to a single count of possession of cocaine. In exchange for his plea, the State agreed to recommend probation and the mitigated number in the corresponding criminal history box. Robles' presentence investigation report calculated

his criminal history score as A, giving him a presumptive prison sentence range for his crime of 37, 40, or 42 months.

Prior to sentencing, Robles filed a motion for a dispositional departure, providing numerous reasons supporting his request. Those reasons included his claim that he suffered from a pattern of substance abuse and promised to attend treatment to address those substance abuse problems. Robles also asked that the court impose the mitigated sentence as agreed to in the plea agreement. Robles did not file a motion for a durational departure.

Even though Robles did not request a durational departure, the district court granted him a durational departure to 30 months. The district court noted Robles' ability to get drug treatment, his acceptance of responsibility, and his older criminal history as justification for granting the departure. The district court also granted Robles' request for a dispositional departure.

ANALYSIS

Robles' sole argument on appeal is that the district court abused its discretion in refusing to grant him a further downward durational departure. He does not acknowledge in his motion that he did not ask the court to grant a durational departure. Robles claims the district court abused its discretion in not providing a more substantial durational departure because Robles was subject to mandatory drug treatment and his "criminal history stemmed from his need for drug treatment." We may review the extent of a district court's departure from a presumptive sentence on appeal. K.S.A. 21-6820(a) (departure sentences are "subject to appeal by the defendant or the state"); see *State v. Looney*, 299 Kan. 903, 908-09, 327 P.3d 425 (2014).

When reviewing the extent of a departure, our standard of review is for an abuse of discretion. *State v. Spencer*, 291 Kan. 796, 808, 248 P.3d 256 (2011). "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." *State v. Tafolla*, 315 Kan. 324, 328, 508 P.3d 351 (2022). An action is arbitrary and capricious if no reasonable person would have taken the view adopted by the trial court. *State v. Ward*, 292 Kan. 541, 550-51, 256 P.3d 801 (2011). The party asserting that the district court abused its discretion—in this case Robles—bears the burden of showing such abuse. See *State v. Thomas*, 307 Kan. 733, 739, 415 P.3d 430 (2018).

Here, the district court granted Robles' request for a dispositional departure to probation. And even though Robles did not file a motion for a durational departure and instead requested the district court impose the mitigated sentence of 37 months, the district court found substantial and compelling reasons to depart and ordered an underlying prison sentence of 30 months.

Robles fails to persuade us that no reasonable person would have taken the view of the district court. The district court imposed a shorter sentence than Robles requested. We find no abuse of discretion.

Affirmed.