

NOT DESIGNATED FOR PUBLICATION

No. 126,438

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of I.H.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; RICHARD MACIAS, judge. Submitted without oral argument. Opinion filed November 9, 2023. Affirmed.

Kaitlin M. Dixon, of Dixon Law Group LLC, of Wichita, for appellant.

Lance J. Gillett, assistant district attorney, and *Marc Bennett*, district attorney, for appellee.

Before MALONE P.J., GARDNER and CLINE, JJ.

CLINE, J.: I.H. appeals the district court's revocation of his juvenile sentence of intensive supervised probation and its imposition of his adult prison sentence. He claims there was insufficient evidence to support the court's factual finding that he absconded from probation. But since we do not reweigh evidence on appeal and we defer to the district court's credibility findings, I.H.'s arguments are unpersuasive. We find there was substantial competent evidence to support the court's decision and therefore affirm.

FACTS

I.H.'s Underlying Offenses

In December 2021, the State charged I.H., a 17-year-old, with robbery, aggravated domestic battery, and domestic battery. Pursuant to a plea agreement, I.H. pleaded no contest to the robbery charge and the State dismissed the remaining charges. The parties

also agreed to designate the proceedings against I.H. as an Extended Jurisdiction Juvenile Prosecution (EJJP).

The district court found I.H. guilty of robbery, a level 5 person felony under K.S.A. 2021 Supp. 21-5420(a). Consistent with the plea agreement, the court sentenced him to 9 months' intensive supervised probation for his juvenile sentence and 44 months in prison for his adult sentence. His adult sentence was stayed pending successful completion of his juvenile sentence.

I.H. was ordered to report to his intensive supervision officer (ISO) during the probation term and notify the assigned ISO of any change in place of residence or phone number. The district court allowed I.H. to transfer the administration of his probation to Oklahoma so he could reside with his mother, L.B.

About two months later, in September 2022, the State issued a warrant for I.H.'s arrest, alleging he absconded while on probation. He was arrested on this warrant in January 2023, at which point the State moved to revoke his juvenile sentence and impose his adult sentence.

I.H.'s Revocation Hearing

On March 24, 2023, the district court held an evidentiary hearing on the State's motion. Both parties presented two witnesses. Lauren Buzbee, a juvenile justice specialist for the State of Oklahoma, and Richard Vargas, I.H.'s Kansas ISO, testified for the State. I.H. and L.B. testified in I.H.'s defense.

Buzbee testified about her contact and communication with I.H. and L.B. once I.H. moved to Oklahoma. She was assigned to supervise I.H. in Oklahoma during his probation. She explained that she met I.H. and L.B. in September 2022 when they came

to her office for an initial interview to formulate I.H.'s treatment plan. The purpose of the treatment plan was to determine the level of intensity of the terms and conditions of I.H.'s probation. Buzbee told I.H. once she prepared his treatment plan, he would need to return to her office to sign it and go over all its rules.

Buzbee never met with either I.H. or L.B. again. She said her next contact with them was when L.B. called to notify her that I.H. "was no longer in the home, that he had left." After L.B.'s call, Buzbee then called I.H. on September 26. I.H. told Buzbee he was leaving but did not give her any details about where he was going. Buzbee asked I.H. if he could sign his treatment plan once Buzbee completed it, but I.H. said he could not. I.H. then told her that his phone was being shut off.

Buzbee tried unsuccessfully to reach I.H. several times but his phone was shut off, and he never provided another number to use to contact him. She testified she spoke with L.B. two more times. Both times L.B. said I.H. had not returned and she believed he was not in the state. I.H.'s case was transferred back to Kansas on October 13, 2022, since the Oklahoma office believed he was no longer in the state. The Oklahoma Office of Juvenile Affairs notified I.H. of the transfer by letter, which it sent to L.B.'s home.

Vargas testified next. He discussed meeting with I.H. before he left for Oklahoma and reviewing I.H.'s probation terms with him. Vargas confirmed that I.H. stopped reporting to him, and his case was transferred to Oklahoma on August 9, 2022.

I.H., who was then 18 years old, also testified. While he admitted going to an Oklahoma probation office in early September with his mother, he claimed he did not know he was on probation in Oklahoma. He excused his failure to contact Vargas in Kansas or an Oklahoma probation office because he contended his mother was the one who "always had contact with them." He said he "definitely didn't" think he was on

probation, but at the same time, admitted he knew he had to follow the terms of his Kansas probation.

I.H. denied telling Buzbee he was "leaving" Oklahoma, claiming the only time he spoke to her was at the meeting at her office. L.B. also testified I.H. never left her home and that she never spoke with Buzbee on the telephone.

At the end of the hearing, the district court found the State had shown by a preponderance of the evidence that I.H. absconded from probation. In making this ruling, the court specifically noted that it found Buzbee to be a credible disinterested witness and it found much of I.H.'s testimony did not "seem plausible." It relied on Buzbee's testimony at the hearing as well as her interstate compact for juveniles violation report. Buzbee stated in this report that I.H. told her he was returning to Kansas after a fight with his mother. The court also noted the report stated L.B. told Buzbee that I.H. had left and, while his exact location was unknown, he was most likely returning to Kansas. Finally, the report stated L.B. told Buzbee that I.H. said he "does not care about his probation and will not meet to sign his treatment plan this week."

The district court noted this was the fourth time I.H. had been placed on probation. It pointed out that even though I.H.'s phone was shut off, he could have borrowed his mother's telephone to contact his probation officer. And it noted neither I.H. nor L.B. produced telephone records to support their claims that they never spoke to Buzbee on the telephone or L.B.'s claim that she contacted the probation office to try to set up an appointment. The court revoked I.H.'s juvenile sentence and imposed his adult sentence.

I.H. appeals, claiming the district court's decision was not supported by substantial competent evidence.

ANALYSIS

Standard of Review

Under an EJJP, before the district court imposes an adult sentence, it must find by a preponderance of the evidence that a defendant violated the terms of his or her juvenile sentence. K.S.A. 38-2364(b). Since this decision involves factual findings, our review is limited to determining whether there is substantial competent evidence to support it. *In re E.J.D.*, 301 Kan. 790, 794, 348 P.3d 512 (2015). If there is "legal and relevant evidence that a reasonable person could accept as being adequate to support a conclusion[.]" then there is substantial evidence. *In re A.D.T.*, 306 Kan. 545, 551, 394 P.3d 1170 (2017).

Substantial Competent Evidence Supported the District Court's Finding

I.H. contends there is not substantial competent evidence that he violated his juvenile sentence by absconding. From a factual standpoint, he notes both he and his mother disputed Buzbee's testimony and he claims Buzbee's testimony was unreliable. He also argues his conduct did not meet the legal definition of "abscond" adopted by the Kansas Supreme Court in *State v. Dooley*, 313 Kan. 815, 491 P.3d 1250 (2021). We find both arguments unpersuasive.

First, the district court specifically found Buzbee's testimony to be credible. We must defer to such assessments because, unlike this court, the district court personally observed all the witnesses. *Cresto v. Cresto*, 302 Kan. 820, 839, 844, 358 P.3d 831 (2015). And while I.H. relies heavily on his and his mother's testimony—who both denied talking to Buzbee after their first meeting and claimed I.H. had remained in Oklahoma, working and going to school—the district court found their account was not plausible. We will not overturn a district court's weighing of evidence and credibility assessments based on the cold record we are presented on appeal. *State v. Schaefer*, 305 Kan. 581, Syl. ¶ 7, 385 P.3d 918 (2016).

Next, I.H.'s reliance on *Dooley* is misplaced. In *Dooley*, the Kansas Supreme Court addressed the meaning of the term "abscond" as used in K.S.A. 2013 Supp. 22-3716, which allows a district court to bypass intermediate sanctions when a probationer has absconded. *Dooley*, 313 Kan. at 820. While we agree that situation is analogous to the question before the district court here—that is, whether I.H.'s juvenile intensive supervision program sentence should be revoked and his adult prison sentence imposed—when applying the standards articulated by our Supreme Court in *Dooley*, we find substantial competent evidence supports the district court's finding.

Our Supreme Court noted in *Dooley* that in determining whether a defendant has absconded, the purpose behind the defendant's actions is key. District courts are to consider whether the defendant "sought to 'evade the legal process of a court by hiding within or secretly leaving the jurisdiction,'" and was not simply missing for a brief period or failing to attend one meeting with a probation officer. 313 Kan. at 820. Thus, "[i]f a violator's acts show intent 'to evade probation supervision because the defendant hid or secretly left the jurisdiction *or because a pattern of violations permits the inference that the defendant is intentionally evading the legal process,*' then the defendant has absconded from supervision." 313 Kan. at 820-21 (citing *State v. Robbins*, 345 Or. 28, 36, 188 P.3d 262 [2008]).

The Supreme Court then applied those standards and found *Dooley* had absconded. The court found substantial competent evidence supported the district court's finding that *Dooley* committed a pattern of violations consistent with his admitted intent to evade his court-ordered probation conditions. This evidence included *Dooley*'s failure to enter a halfway house, failure to report his whereabouts, and failure to appear for his scheduled intake meeting with community corrections. 313 Kan. at 821.

We find similar evidence supports the district court's finding here. Buzbee testified L.B. told her I.H. "had left." And I.H. told Buzbee he "was leaving" when Buzbee

contacted him. L.B. then told Buzbee twice more that I.H. had left, and L.B. did not believe I.H. was in the state. While I.H. and L.B. denied the telephone conversations with Buzbee, the district court found Buzbee's testimony more credible. Although they now claim I.H. remained in L.B.'s home, the district court found that testimony implausible. Also, neither I.H. nor L.B. disputed Buzbee's testimony that I.H.'s phone was shut off nor did they provide her with an updated contact number for I.H. Nor does the record show any response by I.H. or L.B. to the letter notifying them that I.H.'s case was being transferred back to Kansas.

A reasonable person could accept Buzbee's testimony as sufficient to support the district court's determination that I.H. absconded. Further, despite admitting at one point that he knew he was on probation in Kansas, I.H. never contacted a Kansas or Oklahoma probation office between the date of his phone conversation with Buzbee in September 2022 until he was arrested in January 2023. The defendant in *Dooley* missed only one meeting with his ISO and turned himself in about one month later. Yet I.H. only attended one meeting with Buzbee and, after telling her he was leaving and providing no new address or contact information, was not seen or heard from again until his eventual arrest several months later. Like our Supreme Court found in *Dooley*, we find that, collectively, the evidence shows a pattern of violations all consistent with an intent to avoid court-ordered probation conditions.

Two of the legislatively stated purposes behind the Kansas Juvenile Offender Code are promoting public safety and holding juvenile offenders accountable for their behavior. K.S.A. 38-2301. I.H.'s unknown whereabouts for several months and cavalier attitude about his probationary responsibilities contradict both those purposes. We see no error in the district court's decision to revoke his juvenile sentence and impose his adult sentence.

Affirmed.