

NOT DESIGNATED FOR PUBLICATION

No. 126,208

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

MICHAEL LYNN HARRIS,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; KEVIN M. SMITH, judge. Opinion filed September 29, 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: Michael Harris appeals the district court's order extending his probation and modifying its conditions. We granted Harris' motion for summary disposition under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). The State does not contest Harris' motion for summary disposition. We affirm the district court's judgment.

Harris pleaded guilty to one count of fleeing or attempting to elude an officer, a level 9 person felony, in violation of K.S.A. 2019 Supp. 8-1568(b)(1)(E) and (c)(2). In exchange for his plea, the State agreed to recommend that the district court dismiss the remaining charge against him and impose the presumptive probation term. In October

2022, the district court sentenced Harris to 11 months' imprisonment but granted probation for 12 months.

Less than four months later, the district court issued a warrant indicating that Harris had violated the terms of his probation. The warrant alleged that Harris had failed to report to his probation officer on many occasions. It also stated that Harris admitted to using methamphetamine and marijuana.

Harris waived his right to an evidentiary hearing and stipulated to the probation violations. The State asked the district court to extend Harris' probation by 12 months and require that he successfully complete an inpatient drug program. Harris requested the district court extend his probation by 24 months and not order any inpatient treatment. Harris argued against inpatient treatment because he wanted to visit his father at the KU Medical Center, where his father was receiving cancer treatment.

Ultimately, the district court extended Harris' probation by 12 months and ordered him to spend three days in jail and then be immediately released into an inpatient treatment facility. The district court noted Harris' request to visit his father, but it reasoned Harris would be more successful on probation if he received inpatient treatment. The court also indicated that if Harris did well with his treatment, he may be able to visit his father in a few weeks.

Harris appeals. He does not challenge the district court's decision to revoke his probation; rather, he argues the district court abused its discretion when it modified his probation by ordering him to immediately attend inpatient treatment. Harris asserts that it was unreasonable for the district court to order him to attend inpatient treatment, rather than extend his probation for 24 months, because this outcome prevented him from visiting his father in the hospital.

Once a probation violation has been established, the decision to modify the terms of probation is within the sound discretion of the district court. See *State v. Skolaut*, 286 Kan. 219, 227-28, 182 P.3d 1231 (2008). A judicial action constitutes an abuse of discretion if it is arbitrary, fanciful, or unreasonable or if it is based on a legal or factual error. *State v. Levy*, 313 Kan. 232, 237, 485 P.3d 605 (2021).

Under K.S.A. 2022 Supp. 22-3716(c)(1)(B), the district court has broad discretion to continue or modify the release conditions after a person has violated the terms of probation. Harris must demonstrate that the district court abused its discretion by ordering him to attend inpatient treatment. See *State v. Rojas-Marceleno*, 295 Kan. 525, 531, 285 P.3d 361 (2012). Harris does not contend the district court made an error of fact or law. Instead, he argues the district court's action was unreasonable given his request to visit his father while he received cancer treatment.

But the district court's action here was reasonable. The probation violation warrant alleged Harris admitted using methamphetamine and marijuana about one month after being placed on probation, which Harris later admitted again. He also acknowledged that he had not provided proof that he had attended drug treatment—another condition of his probation. The court noted Harris' request to avoid inpatient treatment was motivated by his desire to visit his father, but it reasonably found Harris would not be successful on the extended probation without attending drug treatment. The court noted that it did not "want to set [Harris] up to fail"—that is, to violate his probation again with additional drug use. And the court noted it would be "fairly generous" and would permit Harris to visit his father if he had "good behavior . . . within the next two or three weeks." Under these circumstances, Harris has not shown that district court abused its discretion by ordering him to immediately attend inpatient drug treatment.

Affirmed.