

NOT DESIGNATED FOR PUBLICATION

No. 123,293

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

JUAN O'NEIL WHITAKER JR.,
Appellant.

MEMORANDUM OPINION

Appeal from Saline District Court; JARED B. JOHNSON, judge. Opinion filed September 24, 2021.
Appeal dismissed.

Submitted by the parties for summary disposition pursuant to K.S.A. 2020 Supp. 21-6820(g) and (h).

Before BRUNS, P.J., SCHROEDER and GARDNER, JJ.

PER CURIAM: Juan O'Neil Whitaker Jr. pled guilty in a global plea agreement to multiple felonies and misdemeanors in six different cases, which the district court consolidated for appeal. The facts of the cases are not material to resolve the issue on appeal.

At sentencing, Whitaker moved the district court to depart from the presumptive prison sentences in his cases to probation and to run his felony conviction sentences consecutive. The district court announced his presumptive sentences in 19CR233 for his two felony convictions for a controlling sentence of 38 months' imprisonment; his sentence in 20CR183 of 34 months' imprisonment to be served consecutively to

19CR233, for a base sentence of 72 months; and then ordered all of his other sentences as announced in each case to run concurrent to the base sentence. Next, based on Whitaker's criminal history score of A, the district court denied his motion to depart.

We granted Whitaker's request for summary disposition of his appeal under Supreme Court Rule 7.041A (2021 Kan. S. Ct. R. 48). Whitaker argues the district court abused its discretion in denying his motion for dispositional departure to probation, but he also concedes we lack jurisdiction to consider his presumptive sentences. Whitaker is correct. Under K.S.A. 2020 Supp. 21-6820(c)(1), this court "shall not review . . . [a]ny sentence that is within the presumptive sentence for the crime." Whitaker's on-grid felony sentences fall within the presumptive ranges established by K.S.A. 2020 Supp. 21-6804 for nondrug crimes. Therefore, we lack jurisdiction to consider Whitaker's claim the district court abused its discretion.

Appeal dismissed.