IN THE SUPREME COURT OF THE STATE OF KANSAS

Nos. 124,625,
124,898

CHRISTOPHER SHELTON-JENKINS,
Appellant,

v.

STATE OF KANSAS,
Appellee.

SYLLABUS BY THE COURT

1.

A defendant cannot raise new claims for the first time on appeal unless an exception applies.

2.

A defendant claiming ineffective assistance of counsel to warrant setting aside a plea under K.S.A. 2022 Supp. 22-3210(d)(2) must demonstrate counsel's performance deprived the defendant of his or her Sixth Amendment right to counsel.

Appeal from Johnson District Court; J. CHARLES DROEGE, judge. Opinion filed April 7, 2023. Affirmed.

Richard P. Klein, of Lenexa, argued the cause and was on the brief for appellant.

Kendall S. Kaut, assistant district attorney, argued the cause, and *Shawn E. Minihan*, assistant district attorney, *Stephen M. Howe*, district attorney, and *Derek Schmidt*, attorney general, were on the brief for appellee.

The opinion of the court was delivered by

STEGALL, J.: Christopher Shelton-Jenkins received a hard 25 life sentence in 2014 after pleading guilty to first-degree premeditated murder. Several years later, Shelton-Jenkins filed a motion to withdraw his plea under K.S.A. 2017 Supp. 22-3210 and a subsequent K.S.A. 60-1507 motion alleging ineffective assistance of counsel and involuntariness when he entered the plea. After an evidentiary hearing where both trial counsel and Shelton-Jenkins testified, the district court denied both motions. Today we affirm the decision of the district court.

FACTS

Shelton-Jenkins pled guilty to the premeditated first-degree murder of Brandon Holmes in 2014. In return, the State agreed to not seek a hard 50. At the plea hearing, Shelton-Jenkins agreed with the following facts presented by the State in support of the plea:

> "[O]n September 20th, 2013, law enforcement received a 911 call from Audreonna Shelton who reported she had returned to her residence . . . to find that her roommate, Brandon Holmes, was lying on the floor and unresponsive. Officers and Med-Act responded to the scene and Mr. Holmes was pronounced deceased.
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> "An autopsy was performed the following day by Dr. Charles Glenn who opined that the manner of death was homicide by gunshot wound. Several projectiles were recovered from Mr. Holmes' body.
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> "Investigators subsequently interviewed Renee Reeves, which is Audrey's mother. She advised that she saw Mr. Holmes around 10:30 that morning at a Dunkin Donuts where she worked located on Metcalf. Mr. Holmes wasn't feeling well and left indicating he was going to go home. Investigat[ors] believed that Ms. Reeves was most likely the last person to see Mr. Holmes alive prior to the homicide.

"Subsequent investigation identified the defendant, Christopher Shelton-Jenkins, as a suspect in the homicide. The defendant is married to Audreonna, the victim's roommate, and investigators developed the potential motive that the defendant believed their relationship was inappropriate.

"The defendant was interviewed by the detectives on September 23rd. During that interview, the defendant admitted that he wanted to kill Mr. Holmes and had planned to kill Mr. Holmes for several weeks. However, he explained that this time, someone else beat him to it.

"He also told officers that there would be incriminating text messages found on his cellphone that would make it appear he was responsible for Mr. Holmes' death. Officers obtained a search warrant and recovered those messages.

"On the 25th, detectives also interviewed the defendant's younger brother, Willie. During that interview, Willie told the officers that he knew his brother was planning to kill the victim. He said that they spoke on September 20th, and during that conversation, the defendant said that the murder was complete and the gun was available for sell.

"The brother indicated that he later found the gun inside the family residence after the defendant was arrested and hid it in the bed of a pickup truck located in a wooded area near the house. Officers obtained search warrants—a search warrant and were able to retrieve the gun.

"Ballistic testing on the gun established that it was the murder weapon and that it matched the bullets that were used to kill Mr. Holmes.

"On September 26th, detectives interviewed the defendant a second time. During this interview, the defendant admitted he set up the murder of Mr. Holmes, but at this point claimed not to have been the person who actually shot the victim.

> "However, on March 14th, deputies with the sheriffs[']office searched the defendant's cell at the jail. During that search, they found a large amount of documents, including a journal entry written by the defendant essentially confessing to the homicide and to shooting and killing Mr. Holmes. The statement describes how the defendant entered the victim's home, waited for him to come home, and then shot him multiple times and disposed of the weapon."

The sentencing judge followed the parties' plea agreement and sentenced Shelton-Jenkins to a hard 25. Shelton-Jenkins appealed, and we summarily affirmed his sentence.

Three years after he was sentenced according to the plea agreement, Shelton-Jenkins filed a motion to withdraw his plea under K.S.A. 2017 Supp. 22-3210. He asserted that his trial counsel was ineffective because his counsel did not inform him of the applicable lesser included offenses; that his guilty plea was not knowingly and voluntarily made; and that his guilty plea was improperly accepted without a sufficient finding of factual basis.

Then Shelton-Jenkins filed for relief under K.S.A. 2017 Supp. 60-1507. Shelton-Jenkins made the same claims in this motion as in his motion to withdraw plea. He claimed he did not receive adequate notice of the true nature of the charge, he was not informed that his crime fit a lesser charge, and his plea did not "represent an intelligent decision among the alternative choices."

At an evidentiary hearing held before the district court on both motions, Shelton-Jenkins testified that he did not "remember any statutes for lesser includeds at all," while his trial counsel testified that he did go over all potentially applicable lesser included

subsections with Shelton-Jenkins, as well as the hard 40 and 50 sentencing statutes. After considering the evidence presented at the hearing, the district court denied both motions.

DISCUSSION

Shelton-Jenkins has not preserved any issue on appeal as it relates to his 60-1507 motion. First, he has abandoned the arguments he made below by raising them only incidentally in his brief. He has not explained which lesser included offenses would have been relevant to his case or how they may have changed his decision to plead guilty. Likewise, at oral arguments, counsel did not explain to the court which—if any—lesser included offenses were applicable to Shelton-Jenkins' case. We therefore find that he has abandoned the arguments made below. See *State v. Swint*, 302 Kan. 326, 346, 352 P.3d 1014 (2015) ("To preserve an issue for appellate review, it must be more than incidentally raised in an appellate brief; it must be accompanied by argument and supported by pertinent authority or an explanation why the argument is sound despite the lack of authority or existence of contrary authority."); see also *State v. Meggerson*, 312 Kan. 238, 246, 474 P.3d 761 (2020) (same).

Shelton-Jenkins' does make new arguments, but they are raised for the first time on appeal. Finding no exceptions apply, these too are unpreserved. Shelton-Jenkins' slew of brand-new assertions include arguments that his counsel did not thoroughly investigate his case, inaccurately explained the hard 50 sentencing procedure, did not review discovery with him, did not explain the concept of jury nullification, and did not discuss mitigation with him. Shelton-Jenkins did not raise any of these claims in his original motions.

Moreover, Supreme Court Rule 6.02(a)(5) (2023 Kan. S. Ct. R. at 36) makes clear that an appellant must include in his or her brief a pinpoint citation showing where each argument was raised and ruled on in the record on appeal. If the issue was not raised

below, the appellant must explain why the issue is properly before us. In other words, unless an exception applies, Shelton-Jenkins cannot raise these new claims for the first time on appeal of his 60-1507 motion. See *Robertson v. State*, 288 Kan. 217, 227, 201 P.3d 691 (2009). And Shelton-Jenkins has failed to argue—either in his brief or at oral arguments—that any exception applies.

Turning now to Shelton-Jenkins' motion to withdraw his plea under K.S.A. 2017 Supp. 22-3210(d)(2), we review a district court's decision to deny a postsentence motion to withdraw a plea for abuse of discretion. The defendant bears the burden of establishing any such abuse of discretion. *State v. Cott*, 311 Kan. 498, Syl. ¶ 2, 464 P.3d 323 (2020).

In contending the district court erred in denying his motion to withdraw his guilty plea, Shelton-Jenkins essentially incorporates and restates his contentions from his 60-1507 claim of ineffective assistance of counsel. In order to demonstrate manifest injustice to warrant setting aside a plea based on ineffective assistance of counsel, a defendant must show counsel's performance deprived the defendant of his or her Sixth Amendment right to counsel. Courts consider whether a reversible denial of the right occurred by applying the two-prong test stated in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), which also applies to challenges to guilty pleas. *Hill v. Lockhart*, 474 U.S. 52, 58-59, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985); *State v. Johnson*, 307 Kan. 436, Syl. ¶ 2, 410 P.3d 913 (2018). In such a case, the defendant must show (1) that counsel's representation fell below an objective standard of reasonableness and (2) "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill*, 474 U.S. at 59.

But just as Shelton-Jenkins has failed to meet the constitutional test for establishing ineffective assistance of counsel under K.S.A. 2021 Supp. 60-1507, so too

his argument for statutory manifest injustice must fail. See *State v. Adams*, 297 Kan. 665, 673-74, 304 P.3d 311 (2013). The district court did not abuse its discretion in denying Shelton-Jenkins' motion to withdraw plea.

Affirmed.

STANDRIDGE, J., not participating.