

NOT DESIGNATED FOR PUBLICATION

No. 124,907

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

OWEN K. LINGENFELTER,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; JEFFREY SYRIOS, judge. Opinion filed May 12, 2023.
Affirmed.

Sam S. Kepfield, of Hutchinson, for appellant.

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

Before GREEN, P.J., HURST, J., and TIMOTHY G. LAHEY, S.J.

PER CURIAM: Owen K. Lingenfelter appeals the summary dismissal of his motion to correct an illegal sentence. He does not contend the district court erred in its interpretation or application of the illegal sentence statute, K.S.A. 22-3504, when it dismissed the motion. Lingenfelter instead argues the district court abused its discretion by failing to construe his motion as one for habeas relief and granting a hearing under K.S.A. 60-1507. We find no error and affirm the ruling of the district court.

FACTUAL AND PROCEDURAL BACKGROUND

Lingenfelter is serving a 620-month prison sentence for the rape of his 16-year-old relative. Since his 2005 conviction, in addition to his unsuccessful direct appeal, Lingenfelter appealed three (of five) separate unsuccessful habeas motions under K.S.A. 60-1507, and he filed a previous unsuccessful motion in district court to correct an illegal sentence under K.S.A. 22-3504. He appealed the denial of his request for DNA testing in this case, and he brought various appeals involving unrelated prior convictions. Eight different panels of our court, comprising 23 different appellate judges, have considered and denied Lingenfelter's multiple appeals over the years. Those interested in the details of Lingenfelter's prior appeals arising from his rape conviction may consult our prior opinions. See *State v. Lingenfelter*, No. 95,892, 2007 WL 1309610 (Kan. App. 2007) (unpublished opinion) (denial of direct appeal; affirmed conviction and sentence on direct appeal); *Lingenfelter v. State*, No. 102,391, 2010 WL 4320356 (Kan. App. 2010) (unpublished opinion) (affirming denial of Lingenfelter's first K.S.A. 60-1507 motion); *State v. Lingenfelter*, No. 105,551, 2012 WL 687836 (Kan. App. 2012) (unpublished opinion) (affirming district court's denial of Lingenfelter's request for DNA testing); *Lingenfelter v. State*, No. 108,459, 2013 WL 3491292 (Kan. App. 2013) (unpublished opinion) (affirming district court's denial of Lingenfelter's second K.S.A. 60-1507 motion); *Lingenfelter v. State*, No. 120,837, 2020 WL 3393790 (Kan. App. 2020) (unpublished opinion) (affirming district court's denial of Lingenfelter's third K.S.A. 60-1507 motion).

In the present case, Lingenfelter filed a pro se K.S.A. 22-3504 motion to correct illegal sentence. He argued that his due process rights were violated because he did not get to help pick the jury, and his attorney, the district attorney, and the trial judge allowed a juror to be on the panel even though that juror had a friend who had been sexually assaulted. He contended he should have been granted a new trial at the time. For relief, he

requested his sentence be corrected without specifying the details of the proposed correction. He did not ask that we grant him a new trial or release him from custody. The State responded that Lingenfelter was improperly using the motion to correct illegal sentence to collaterally attack his conviction. The district court summarily denied Lingenfelter's motion to correct illegal sentence by written order, stating:

"Defendant's motion is denied. Defendant fails to present a substantial question of law or fact. *State v. Duke*, 263 Kan. 193[, 946 P.2d 1375] (1997). Defendant does not attempt to establish his sentence was illegal. Instead, he seeks to use K.S.A. 22-3504 (correction of illegal sentence) to collaterally attack his conviction."

When a district court summarily denies a motion to correct illegal sentence, the appellate court applies a de novo standard of review because it has the same access to the motion, records, and files as the district court. *State v. Alford*, 308 Kan. 1336, 1338, 429 P.3d 197 (2018).

A court may correct an illegal sentence at any time while the defendant is serving the sentence. K.S.A. 2022 Supp. 22-3504(a). An illegal sentence is defined as a sentence that (1) is imposed by a court without jurisdiction; (2) does not conform to the applicable statutory provisions, either in character or the term of punishment; or (3) is ambiguous about the time and manner in which it is to be served. K.S.A. 2022 Supp. 22-3504(c)(1); *State v. Mitchell*, 315 Kan. 156, 158, 505 P.3d 739 (2022). Whether a sentence is illegal within the meaning of K.S.A. 2022 Supp. 22-3504 is a question of law over which the appellate court has unlimited review. 315 Kan. at 158.

Lingenfelter argues his due process rights were violated when his attorney did not include him in jury selection and when the attorney, the prosecutor, and the trial judge did nothing to dismiss a biased juror from the panel. His argument is essentially that these alleged trial defects affected his conviction and ultimately the legality of his sentence.

But "[t]he illegal sentence statute is one of specific and limited application." 315 Kan. at 159. We find that Lingenfelter's motion to correct illegal sentence was properly denied without a hearing as it presented no arguments on any of the statutory elements of the illegal sentence statute. See 315 Kan. at 159 (upholding summary denial of motion to correct illegal sentence for failure to make a claim based on the specific statutory provisions of K.S.A. 2020 Supp. 22-3504).

Furthermore, because the definition of an illegal sentence does not encompass violations of constitutional provisions, a defendant may not challenge a sentence on constitutional grounds under K.S.A. 2022 Supp. 22-3504. See *State v. Lee*, 304 Kan. 416, 418, 372 P.3d 415 (2016). Because Lingenfelter asserts only due process constitutional claims, his claims are not subject to review under K.S.A. 2022 Supp. K.S.A. 22-3504. "[A]n erroneous conviction does not render the ensuing sentence illegal if that sentence is appropriate for the crime for which the defendant was convicted. In that instance, any relief must emanate from an attack on the improper conviction, not on the proper sentence." *State v. Horton*, 308 Kan. 757, 761, 423 P.3d 548 (2018). Lingenfelter does not allege that the sentence imposed for rape is inappropriate in any way. The district court was correct in finding that Lingenfelter was not entitled to a hearing on his motion to correct an illegal sentence.

Recognizing the absence of any tenable illegal sentence claim, Lingenfelter does not challenge the district court's ruling that he was not entitled to relief under K.S.A. 22-3504. Instead, he now argues the district court erred by failing to liberally construe his pro se motion as a motion for writ of habeas corpus under K.S.A. 60-1507, failing to appoint counsel, and failing to hold an evidentiary hearing. The State's response quotes our court in Lingenfelter's third K.S.A. 60-1507 appeal, noting that having drafted and filed five previous habeas motions and a prior motion to correct illegal sentence, Lingenfelter "knew the difference between the two" types of motions. See *Lingenfelter*,

2020 WL 3393790, at *1. In that case, when the district court summarily dismissed Lingenfelter's habeas motion as both successive and untimely, Lingenfelter contended on appeal that the district court erred by failing to liberally construe his habeas motion as a motion to correct illegal sentence. In the present case, Lingenfelter, having correctly recognized the lack of merit in the illegal sentence argument, makes the opposite request—that we liberally construe the motion to correct illegal sentence as a habeas motion. The State argues that Lingenfelter filed his motion pursuant to K.S.A. 22-3504 because he knew that on appeal from its denial, he could argue it should be construed as a K.S.A. 60-1507 motion—thereby circumventing the filing fee and timeliness requirements of a K.S.A. 60-1507 claim. We decline to speculate about Lingenfelter's motivation for filing his present motion as it is irrelevant to the resolution of the dispute.

ANALYSIS

The sole issue on appeal is whether district court erred by failing to construe Lingenfelter's motion to correct an illegal sentence as one for habeas relief under K.S.A. 60-1507.

"Whether a district court properly construed a pro se pleading is a question of law subject to unlimited review." *State v. Redding*, 310 Kan. 15, 18, 444 P.3d 989 (2019). And the appellate court has discretion to construe an improper motion to correct illegal sentence as a motion challenging the sentence under K.S.A. 60-1507. 310 Kan. at 18-19. Courts must interpret pro se pleadings based on their contents rather than solely on their title or labels. 310 Kan. at 18. The court should look to the relief requested rather than rely on a formulaic adherence to pleading requirements. However, the court's duty to liberally construe pro se pleadings is not limitless. "A court is not required to divine every conceivable interpretation of a motion, especially when a litigant repeatedly asserts

specific statutory grounds for relief and propounds arguments related to that specific statute." 310 Kan. at 18.

We begin by observing that Lingenfelter titled his document "Motion to Correct Illegal Sentence," and he also filed his motion under the criminal case number associated with his crime of conviction rather than as a separate civil action as he has done in his previous applications for habeas relief. See 310 Kan. at 19 (noting that the defendant titled his pleading as a "Motion to Correct An[] Illegal Sentence" and filed it under the criminal case number). These filings indicate that Lingenfelter understood how to use the K.S.A. 22-3504 motion process but is not dispositive of whether his motion is one to correct an illegal sentence or a challenge to his trial counsel's effectiveness. See 310 Kan. at 18 (the court should look to more than solely a pleading's title or label when divining its purpose).

Based on Lingenfelter's extensive experience with K.S.A. 60-1507, and our court's previous observation that Lingenfelter understands the difference between a motion to correct illegal sentence and a motion for relief under K.S.A. 60-1507, it is reasonable to assume that he would have filed a 60-1507 motion if he intended to do so. And having filed five previous K.S.A. 60-1507 motions, "Lingenfelter is well-acquainted with the drafting and filing requirements for seeking K.S.A. 60-1507 relief." *Lingenfelter*, 2020 WL 3393790, at *2. In addition, he was plainly on notice that future motions under K.S.A. 60-1507 were subject to summary dismissal as successive and time-barred, having been so advised by this court in both of his last two K.S.A. 60-1507 appeals. See 2020 WL 3393790, at *2; 2013 WL 3491292, at *1. It is reasonable to conclude that recognizing his inability to bring yet another K.S.A. 60-1507 challenge, Lingenfelter was seeking a new method of attack on his conviction and sentence. We conclude that the district court properly considered Lingenfelter's motion as one for relief under K.S.A. 2022 Supp. 22-3504.

And even if we were to construe Lingenfelter's motion to correct illegal sentence as a K.S.A. 60-1507 motion, it would still be subject to summary dismissal. Lingenfelter's motion fails to overcome the two procedural obstacles to his motion—that it is successive and untimely.

First, Lingenfelter has previously filed multiple pro se K.S.A. 60-1507 motions, but district courts are not "required to entertain a second or successive motion for similar relief on behalf of the same prisoner." K.S.A. 2022 Supp. 60-1507(c). "A movant in a K.S.A. 60-1507 motion is presumed to have listed all grounds for relief, and a subsequent motion need not be considered in the absence of a showing of circumstances justifying the original failure to list a ground." *State v. Trotter*, 296 Kan. 898, Syl. ¶ 2, 295 P.3d 1039 (2013). To avoid dismissal of a second or successive K.S.A. 60-1507 motion, the movant bears the burden of establishing exceptional circumstances. *Beauclair v. State*, 308 Kan. 284, 304, 419 P.3d 1180 (2018). Exceptional circumstances are unusual events or intervening changes in the law that prevented the defendant from raising the issue in a prior K.S.A. 60-1507 motion. 308 Kan. at 304. Exceptional circumstances can include ineffective assistance of counsel claims and a colorable claim of actual innocence based on the crime victim's recantation of testimony that formed the basis of the charge against the defendant. See 308 Kan. at 304 (colorable claim of actual innocence); *Rowland v. State*, 289 Kan. 1076, 1087, 219 P.3d 1212 (2009) (ineffective assistance of counsel).

In his motion, Lingenfelter argues no exceptional circumstances warranting the district court's consideration of a successive K.S.A. 60-1507 motion. He could have raised the jury selection issues in a previous K.S.A. 60-1507 motion but did not, and the district court is not required to now entertain his argument. Neither his motion to correct illegal sentence nor his brief on appeal assert an exceptional circumstance to overcome the successive motions procedural hurdle. See *State v. Robertson*, 309 Kan. 602, 608-09,

439 P.3d 898 (2019) (discussing defendant's failure to argue exceptional circumstances existed for the appellate court to consider motion to correct illegal sentence as a K.S.A. 60-1507 motion).

Second, Lingenfelter's motion was filed more than one year after his conviction became final, and he makes no argument that manifest injustice would support extending this limitation. A defendant has one year from when a conviction becomes final to file a motion under K.S.A. 60-1507(a). K.S.A. 2022 Supp. 60-1507(f)(1). The one-year time limitation for bringing an action under K.S.A. 60-1507(f)(1) may be extended by the district court only to prevent a manifest injustice. K.S.A. 2022 Supp. 60-1507(f)(2). "A defendant who files a motion under K.S.A. 60-1507 outside the 1-year time limitation in K.S.A. 60-1507(f) and fails to assert manifest injustice is procedurally barred from maintaining the action." *State v. Roberts*, 310 Kan. 5, 13, 444 P.3d 982 (2019) (quoting *Trotter*, 296 Kan. 898, Syl. ¶ 3). Courts are "limited to determining why the prisoner failed to file the motion within the one-year time limitation or whether the prisoner makes a colorable claim of actual innocence." K.S.A. 2022 Supp. 60-1507(f)(2)(A). The Legislature defined actual innocence to mean that the prisoner must "show it is more likely than not that no reasonable juror would have convicted the prisoner in light of new evidence." K.S.A. 2022 Supp. 60-1507(f)(2)(A). Because neither Lingenfelter's motion to correct illegal sentence nor his brief on appeal argue that manifest injustice supports extending the one-year time limitation in K.S.A. 60-1507(f), his claim is untimely. See 310 Kan at 13-14.

In conclusion, we find, even if we construe Lingenfelter's motion as one challenging his sentence under K.S.A. 60-1507, he is procedurally barred from maintaining that claim in this action because it is both successive and untimely.

Affirmed.

