NOT DESIGNATED FOR PUBLICATION

No. 125,033

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

COBY JOE PEARSON,
Appellant.

MEMORANDUM OPINION

Appeal from Miami District Court; AMY L. HARTH, judge. Opinion filed February 24, 2023. Appeal dismissed.

Kai Tate Mann, of Kansas Appellate Defender Office, for appellant.

Madeline Bjorklun, assistant county attorney, *Elizabeth H. Sweeney-Reeder*, county attorney, and *Derek Schmidt*, attorney general, for appellee.

Before SCHROEDER, P.J., WARNER and CLINE, JJ.

PER CURIAM: Coby Joe Pearson pleaded guilty to one count of aggravated assault with a deadly weapon in Miami County District Court. The district court found the handgun he used in committing this crime was a deadly weapon and ordered Pearson to register as a violent offender for 15 years under the Kansas Offender Registration Act (KORA).

On appeal, Pearson argues for the first time that KORA is facially unconstitutional, as it impermissibly infringes on an offender's right to freedom of speech

under the First Amendment to the United States Constitution. He contends that KORA compels offenders to speak at the government's behest, denies them the ability to speak anonymously, and is not narrowly tailored to promote a compelling government interest. But because Pearson raises this issue for the first time on appeal, we decline to consider it and dismiss his appeal.

Although we seldom consider newly raised constitutional claims, Pearson contends two recognized exceptions to our general rule apply here: (1) The newly asserted claim involves only a question of law arising on proved or admitted facts and is determinative of the case and (2) consideration of the claim is necessary to serve the ends of justice or to prevent the denial of fundamental rights. *State v. Godfrey*, 301 Kan. 1041, 1043, 350 P.3d 1068 (2015). Pearson claims the first exception applies because he is bringing a facial challenge to KORA and the second applies because the rights afforded under the First Amendment are fundamental.

Even if we found that an exception applies and would allow us to consider Pearson's claim for the first time on appeal, we must consider whether doing so would be prudential. See *State v. Jones*, 313 Kan. 917, 933, 492 P.3d 433 (2021). And while Pearson argues it would be imprudent to fail to reach this issue—claiming to do so would "effectively den[y] the citizens of Kansas the full extent of their rights as Americans and Kansans"—we disagree.

Identifying the compelling governmental interests KORA is meant to protect and then determining whether it is sufficiently narrowly tailored to serve those interests involves examining a host of issues best explored first at the district court level. Analyzing the proportionality of KORA requires an in-depth balancing of its benefits and costs, along with exploring potential alternatives to achieving those benefits and the accompanying costs and anticipated effectiveness of those alternatives. It may even involve evaluating KORA's effectiveness in protecting the compelling governmental

interests it is meant to serve, which could involve the presentation of evidence and fact-finding. And "[f]act-finding is simply not the role of appellate courts." *State v. Nelson*, 291 Kan. 475, 488, 243 P.3d 343 (2010) (citing *State v. Thomas*, 288 Kan. 157, 161, 199 P.3d 1265 [2009]).

Still, even were we to agree that Pearson satisfied one of the exceptions to our generally prohibitive rule, we are under no obligation to review his newly asserted claim. *State v. Jones*, No. 124,174, 2023 WL 119911, at *5 (Kan. App. 2023) (unpublished opinion) (citing *State v. Robison*, 314 Kan. 246, 248, 496 P.3d 892 [2021], and *State v. Gray*, 311 Kan. 164, 170, 459 P.3d 165 [2020] ["Declining to reach an unpreserved claim and finding the failure to present the argument to the district court 'deprived the trial judge of the opportunity to address the issue in the context of this case and such an analysis would have benefitted our review.'"]). In fact, other panels of this court have similarly rejected requests to address this same constitutional question for the first time on appeal, finding it was not prudential. See *Jones*, 2023 WL 119911, at *5-6; *State v. Masterson*, No. 124,257, 2022 WL 3692859, at *2 (Kan. App. 2022) (unpublished opinion) (citing *Gray*, 311 Kan. at 170).

Whether KORA's restrictions are constitutionally acceptable given the government's compelling aims is not a question best addressed for the first time on appeal. Because Pearson failed to present his constitutional challenge to the district court, we decline to reach the merits of his argument for the first time on appeal.

Appeal dismissed.