

NOT DESIGNATED FOR PUBLICATION

No. 125,152

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

CARL L. RITZ,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; DAVID J. KAUFMAN, judge. Opinion filed August 11, 2023. Affirmed.

Kristen B. Patty, of Wichita, for appellant.

Lance J. Gillett, assistant district attorney, *Marc Bennett*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before WARNER, P.J., COBLE and PICKERING, JJ.

PER CURIAM: Carl L. Ritz appeals from the denial of his motion to correct illegal sentence. The sole issue on appeal is Ritz' claim that his sentence in case 09CR3704 is illegal because his sentence in case 14CR504 was ordered to run consecutive to the 16-month sentence in case 09CR3704. And Ritz claims that he has already served this sentence. The district court ruled that issues of miscalculation of a defendant's sentence(s) by the Kansas Department of Corrections (KDOC) should be addressed through the filing of a petition under K.S.A. 60-1501 in the county of defendant's incarceration. Ritz claims on appeal that he takes no issue with KDOC's calculation of his release date and is solely

challenging his sentence as illegal. Having reviewed the record, we find no error by the district court and thereby affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In May 2010, Ritz entered a plea agreement in case 09CR3704 and pled guilty to one count of felony theft, a severity level 9 nonperson felony. At sentencing, Ritz did not object to his criminal history score of A. Under the sentencing grid, Ritz was to receive a presumptive prison sentence. Accordingly, at sentencing the district court sentenced Ritz to 16 months in prison. The district court ordered Ritz' 16-month sentence run concurrent with his 57-month prison sentence in case 09CR1049. The district court further ordered Ritz to serve 12 months of postrelease supervision once he completed his prison sentence. After completing the prison term associated with his two sentences, Ritz was released from prison in 2013 and began his term of postrelease supervision.

In 2014, while Ritz was subject to postrelease supervision, he was charged in a third case, 14CR504, and was convicted of attempted offender registration violation, a severity level 5 person felony. In 2015, the district court sentenced Ritz to serve 130 months in prison and ordered this sentence to run consecutive to case 09CR3704.

In June 2019, while serving this 130-month sentence, Ritz filed pro se a motion in case 09CR3704, titled "Nunc Pro Tunc Motion," seeking to correct what he deemed "miscalculations" with his sentence. Ritz specifically asked the district court to "instruct KDOC to recalculate his sentence to the controlling sentence mandated by this court." The district court summarily denied Ritz' motion, explaining:

- "1. In defendant's (D) 09CR cases, the Court sentenced D to KDOC as follows:
 - 57 months on 11/20/09 in the 1049 case; 16 months on 7/1/10 in the 3704 case.
 - both cases were concurrent with each other.

—lawful post-release was ordered in each case.

"2. In D's 14CR case, the Court sentenced D to KDOC as follows:

—130 months on 8/20/15.

—as it relates to the other 09CR cases, the 130 months was ordered consecutive to the 3704 case.

—lawful post-release was ordered in the 14CR case.

"3. D's complaint centers around KDOC's calculation of credit towards . . . post-release time he may or may not have completed in one or both of the 09CR cases.

"4. As such, the issue is one outside the jurisdiction of the Court. [KDOC] exclusively handles post-release calculations, not the courts. Where a defendant complains of post-release calculations, as D has done herein, the remedy under the law is to file a petition pursuant to K.S.A. 60-1501 in the county of D's incarceration. For D, this would be Reno County."

Ritz did not appeal this ruling.

Several months later, in November 2019, Ritz filed pro se another motion in case 09CR3704, titled "Nunc Pro Tunc Motion," again seeking to "correct the miscalculations with his sentence" He again prayed that the district court would "instruct KDOC to recalculate his sentence to the controlling sentence," which he claimed "should be 130 months on [case] 14CR504 and 16 months to run consecutive on case 09CR3704." In support, Ritz attached to his motion portions of the journal entry of judgment from case 14CR504 showing that the district court imposed a 130-month prison sentence and ordered that it run consecutive to Ritz' 16-month sentence in case 09CR3704 but concurrent with an 8-year sentence for a case out of Harrison County, Missouri.

Again, the district court summarily denied the motion, stating: "Issues of miscalculations of a defendant's sentence(s) are addressed through the filing of a petition pursuant to [K.S.A.] 60-1501, and said petition must be filed in the county of defendant's incarceration, i.e. Reno County." The court further explained: "Defendant's issue herein is his allegation that KDOC is not awarding him approximately 51 months of

incarceration credit he states he previously served in one or both of the above cases [09CR1049/09CR3704]."

As with the district court's earlier summary denial ruling, Ritz did not appeal this ruling.

In March 2021, Ritz filed pro se a third motion, titled "Motion For Nunc Pro Tunc Change or Correction of Journal Entry" in case 09CR3704. Ritz claimed that he was sentenced to 57 months in case 09CR1049 and 16 months in case 09CR3704 to run concurrent, plus 130 months in 14CR504 to run consecutive to case 09CR3704. Ritz claimed he "already did the 16 [months] on case #09CR3704."

The district court once again summarily denied Ritz' motion and explained that the court had already addressed this issue with Ritz. The court further noted:

"Court has previously addressed this issue with D. He is complaining about KDOC's calculation of sentencing credit towards one or more of his cases. NOTE: Other cases involved are 09CR3704 and 14CR504.

"D was directed in June 2019 and November 2019 that the Reno County courts need to address this issue via a 1501 petition filed by D."

Two days after the denial, still in March 2021, Ritz filed pro se the motion to correct illegal sentence that is the subject of this appeal. Ritz alleged that he was sentenced to 57 months in prison on case 09CR1049, 16 months in prison on case 09CR3704 to run concurrent, and that his time was served, as he was released from KDOC in July 2013. Ritz explained that in case 14CR504 he received an additional 130 months in prison but claimed that he

"was also given 16 months on case #09CR3704 to run consecutive to that. *That case was already run [concurrent] with case #09CR1049 in 2009, so there is no way it should now*

be running consecutive to my 2014 case. . . . I'm being made to do the 16 months on case #09CR3704 that I already did."

After receipt of Ritz' third motion relating to his sentences, the district court appointed counsel for Ritz. At a subsequent hearing, defense counsel explained that his client was "wholly convinced" that either the time calculation or the journal entries were wrong. Ritz' counsel told the court, "You're correct, it's never been sought for appeal, and for our purpose I think that may be the only way to get a definitive answer that Mr. Ritz will accept."

The State agreed. The district court reiterated its repeated advice to Ritz over the last several years and denied relief. Ritz timely filed a notice of appeal.

THE DISTRICT COURT DID NOT ERR IN DENYING RITZ' MOTION TO CORRECT ILLEGAL SENTENCE

Ritz denies that he has any problem with KDOC's calculation of his release date, and thus K.S.A. 60-1501 does not apply. Instead, his sole issue on appeal is his claim that he was sentenced to prison twice for the same crime. That is, he asserts because the district court ordered his sentence in 14CR504 to run consecutive to his sentence in 09CR3704, the district court effectively sentenced him to an additional 16 months' imprisonment, which he states he has already served.

Whether a sentence is illegal under K.S.A. 2022 Supp. 22-3504 is a question of law over which the appellate court has unlimited review. *State v. Mitchell*, 315 Kan. 156, 158, 505 P.3d 739 (2022).

"An illegal sentence under K.S.A. 22-3504 is one that (1) is imposed by a court without jurisdiction; (2) does not conform to the statutory provision . . . ; or (3) is

ambiguous with respect to the time and manner in which it is to be served." *State v. Buford*, 307 Kan. 73, 74, 405 P.3d 1194 (2017).

Outside of stating the issue, Ritz did not provide any analysis or supporting authority explaining why the court should rule in his favor. Thus, Ritz waives or abandons any challenge to the district court's ruling by failing to adequately brief the issue. See *State v. Gallegos*, 313 Kan. 262, 277, 485 P.3d 622 (2021) (issues not adequately briefed considered abandoned); *State v. Meggerson*, 312 Kan. 238, 246, 474 P.3d 761 (2020) ("A point raised incidentally in a brief but not argued is also deemed abandoned.").

Even addressing Ritz' claim on its merits, there is nothing illegal about the sentence Ritz received in this case. In case 09CR3704, Ritz was convicted of theft, contrary to K.S.A. 2008 Supp. 21-3701(a)(1) and (b)(6). His sentence was governed by the version of the Kansas Sentencing Guidelines Act in effect at the time—K.S.A. 21-4701 et seq. Ritz' criminal history score was A. Accordingly, his sentence of 16 months in prison was within the range allowed by law. See K.S.A. 2008 Supp. 21-4704(a) (nondrug grid); K.S.A. 2008 Supp. 21-4710 (criminal history categories); K.S.A. 2008 Supp. 21-4711 (criminal history classification). Ritz' sentence was a presumptive sentence and thus is not subject to appellate review. See K.S.A. 2022 Supp. 21-6820(c)(1); *State v. Huerta*, 291 Kan. 831, 837, 247 P.3d 1043 (2011).

The alleged illegality that Ritz claims is the district court *reimposed* his 16-month sentence in case 09CR3704 at sentencing in case 14CR504. Under Ritz' claim, the district court effectively ordered him to serve the sentence twice. Understandably, defendants may not be sentenced twice for the same criminal offense. See *State v. Buchanan*, 317 Kan. 443, 450, 531 P.3d 1198 (2023) ("Double Jeopardy Clause violations can occur in many ways, including when a court imposes multiple punishments for the same

offense."); *State v. Schoonover*, 281 Kan. 453, 463-64, 133 P.3d 48 (2006). But no such "double sentence" occurred here. Ritz' claim is contrary to the record.

Notably, under K.S.A. 2014 Supp. 21-6604(f)(1), which is also known as Special Rule 9, if a defendant is still serving a sentence for a prior felony, including postrelease supervision, then the sentence for the new felony "shall be imposed consecutively."

Our review of the record shows that the district court did not reimpose Ritz' sentence for a second time. As stated by Ritz in his own motion, he was released from prison in case 09CR3704 in 2013. But Ritz' sentence was not complete at that time. He was still serving his postrelease supervision. "[P]ostrelease supervision is a distinct period of the sentence." *State v. Gaudina*, 284 Kan. 354, 361, 160 P.3d 854 (2007); see K.S.A. 2022 Supp. 22-3717(d)(1)(C). And under K.S.A. 2022 Supp. 75-5217(c), if a defendant commits a new crime resulting in a conviction while on postrelease supervision, the postrelease supervision may be revoked and thereupon "the inmate shall serve a period of confinement, to be determined by the prisoner review board, which shall not exceed the remaining balance of the period of postrelease supervision, even if the new conviction did not result in the imposition of a new term of imprisonment."

When Ritz was sentenced to 130 months' imprisonment in case 14CR504, the district court ruled: "[A]s it relates to the other 09CR cases, the 130 months was ordered consecutive to the '3704 case." The court correctly ordered the sentence in case 14CR504 to run consecutive to the sentence previously imposed in case 09CR3704. Although the record is unclear as to how many months of postrelease supervision Ritz had left when he committed his 2014 crime, the time to be served from case 09CR3704 would be the remaining period of postrelease supervision that was ordered in that case, whatever that may be. As such, at sentencing in case 14CR504, the court followed K.S.A. 2014 Supp. 21-6604(f)(1). This ruling did not result in an illegal sentence.

Here, Ritz has failed to show that his sentence is illegal. We therefore affirm the district court's denial of Ritz' motion to correct illegal sentence.

Affirmed.