

NOT DESIGNATED FOR PUBLICATION

No. 125,159

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

VINCENT E. JEFFERSON,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Sedgwick District Court; PHILLIP B. JOURNEY, judge. Opinion filed April 28, 2023.  
Affirmed.

*Sam S. Kepfield*, of Hutchinson, for appellant.

*Boyd K. Isherwood*, assistant district attorney, *Marc Bennett*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before CLINE, P.J., MALONE and ATCHESON, JJ.

PER CURIAM: Vincent E. Jefferson appeals the district court's summary denial of his pro se motion for a nunc pro tunc order vacating the postrelease supervision term from his sentence for his conviction of aggravated burglary. On appeal, Jefferson claims the district court erred in denying his motion because K.S.A. 2011 Supp. 22-3716(e) relieves him from serving a postrelease supervision term following his 2015 probation revocation. This is a different argument than Jefferson made in his motion in district court. In any event, for the reasons we explain in this opinion, Jefferson is not entitled to the relief he seeks, and the district court did not err in summarily denying his motion.

## FACTS

Jefferson's case has a long history, and we will only cover what is necessary to address the question in this appeal. In May 2013, Jefferson pleaded guilty to one count of aggravated burglary in Sedgwick County case No. 12CR2899. The district court sentenced Jefferson to 60 months' imprisonment with 24 months' postrelease supervision but granted probation for 36 months to be supervised by community corrections. This sentence represented both a downward durational and dispositional departure.

Jefferson directly appealed his sentence, and this court found that the district court had erred in classifying a 1980 burglary conviction as a person felony. This court vacated Jefferson's original sentence and remanded with directions for the district court to resentence Jefferson under a corrected criminal history score. *State v. Jefferson*, No. 110,932, 2015 WL 1782599, at \*4 (Kan. App. 2015) (unpublished opinion).

Meanwhile, before this court had issued its mandate in the direct appeal, the district court found that Jefferson had violated his probation by committing new crimes. The district court revoked Jefferson's probation on October 8, 2015, and ordered him to serve his original 60-month prison sentence including 24 months' postrelease supervision.

This court issued its mandate in Jefferson's direct appeal on November 17, 2015. Following the mandate, the district court resentenced Jefferson on March 23, 2016. This time, the district court denied Jefferson's request for a departure sentence because Jefferson had committed new crimes, and the court imposed the mitigated presumptive sentence of 114 months' imprisonment with 24 months' postrelease supervision. This sentence was affirmed by this court on appeal. *State v. Jefferson*, No. 116,268, 2017 WL 3113038, at \*2 (Kan. App. 2017) (unpublished opinion).

Several years later, on October 15, 2021, Jefferson filed a pro se motion for a nunc pro tunc order vacating his postrelease supervision term. Jefferson titled his motion as a "Motion/Request For Nunc Pro Tunc Pursuant to K.S.A. 21-6604(n)(a), [*sic*] And All Other Statutory Authorities." In the motion, Jefferson argued that "K.S.A. 21-6604(n)(a)" prohibited him from serving a postrelease supervision term under the facts of his case. The district court summarily denied the motion, finding that K.S.A. 2021 Supp. 21-6604(n) applies only to convictions of unlawful possession of controlled substances and not to Jefferson's aggravated burglary conviction. Jefferson timely appealed.

#### ANALYSIS

On appeal, Jefferson abandons his claim that his postrelease supervision term should be vacated under K.S.A. 21-6604(n), but he argues for the first time on appeal that the district court erred in denying his motion because K.S.A. 22-3716(e) relieves him from serving a postrelease supervision term following his 2015 probation revocation. Jefferson points out that his pro se motion in district court requested relief under K.S.A. 21-6604(n) and "all other statutory authorities." He claims that his pro se motion should be liberally construed to grant him relief under the other statute.

The State responds that Jefferson's claim under K.S.A. 22-3716(e) is not preserved for appeal. Alternatively, the State argues that Jefferson is not entitled to relief from postrelease supervision under the probation revocation statute because he was originally granted probation as the result of a dispositional departure.

The State would normally be right on the preservation argument. Jefferson's motion requested relief under a specific statute that the district court addressed. Now Jefferson is arguing for relief under a different statute. "Litigants generally are precluded from raising an issue on appeal when they failed to raise the issue in the district court." *State v. Johnson*, 309 Kan. 992, 995, 441 P.3d 1036 (2019). But if Jefferson's claim on

appeal is correct, he is serving an illegal sentence. 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). Under K.S.A. 2022 Supp. 22-3504(a), the court may correct an illegal sentence at any time while the defendant is serving the sentence. And a challenge to an illegal sentence may be raised for the first time on appeal. *State v. Hambright*, 310 Kan. 408, 411, 447 P.3d 972 (2019). We will address the merits of Jefferson's claim for this reason.

Resolution of Jefferson's claim on appeal requires statutory interpretation. Statutory interpretation presents a question of law over which appellate courts have unlimited review. *State v. Stoll*, 312 Kan. 726, 736, 480 P.3d 158 (2021).

Jefferson claims that K.S.A. 22-3716(e) prohibits him from serving a postrelease supervision term following his probation revocation. As the State points out, the applicable provision for Jefferson's crime of conviction is K.S.A. 2011 Supp. 22-3716(e), but the language is essentially the same. K.S.A. 2011 Supp. 22-3716(e) states, in part:

"Notwithstanding the provisions of any other law to the contrary, an offender whose nonprison sanction is revoked and a term of imprisonment imposed pursuant to either the sentencing guidelines grid for nondrug or drug crimes shall not serve a period of postrelease supervision upon the completion of the prison portion of that sentence. The provisions of this subsection shall not apply to offenders sentenced to a nonprison sanction pursuant to a dispositional departure, whose offense falls within a border box of either the sentencing guidelines grid for nondrug or drug crimes, offenders sentenced for a 'sexually violent crime' or a 'sexually motivated crime' as defined by K.S.A. 22-3717, and amendments thereto, offenders sentenced pursuant to K.S.A. 2011 Supp. 21-6804, and amendments thereto, wherein the sentence is presumptive imprisonment but a nonprison sanction may be imposed without a departure or offenders whose nonprison

sanction was revoked as a result of a conviction for a new misdemeanor or felony offense."

Jefferson argues that because his probation was revoked and he had to serve an underlying prison sentence, he is entitled to relief from postrelease supervision. The State argues that an exception to K.S.A. 2011 Supp. 22-3716(e) applies because Jefferson was sentenced to probation as the result of a dispositional departure.

Jefferson's claim fails on the merits, but for a different reason than is argued by either party. Both Jefferson and the State have overlooked the fact that the sentence Jefferson is now serving does not result from his probation revocation in 2015. The sentence Jefferson is now serving results from his resentencing in 2016 to 114 months' imprisonment with 24 months' postrelease supervision—a sentence in which probation was never granted. Thus, Jefferson is not entitled to relief under K.S.A. 2011 Supp. 22-3716(e) because it does not apply to his current sentence.

We add that even if Jefferson were serving a sentence as the result of his 2015 probation revocation, he would not be entitled to relief from postrelease supervision under K.S.A. 2011 Supp. 22-3716(e). As the State argues, the provision releasing probation violators from postrelease supervision does not apply "to offenders sentenced to a nonprison sanction pursuant to a dispositional departure." Jefferson's original sentence to probation in 2013 resulted from a dispositional departure.

In sum, Jefferson's claim fails on its merits because he does not show that his current sentence triggers relief under K.S.A. 2011 Supp. 22-3716(e) or any other statute. The district court did not err in summarily denying Jefferson's motion for a nunc pro tunc order. See *State v. Overman*, 301 Kan. 704, 712, 348 P.3d 516 (2015) (holding that district court's judgment will be upheld if it is correct for any reason).

Affirmed.