NOT DESIGNATED FOR PUBLICATION

No. 125,183

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

SHANON WILLIAMS,
Appellant,

v.

STATE OF KANSAS,
Appellee.

MEMORANDUM OPINION

Appeal from Reno District Court; TRISH ROSE. Opinion filed March 24, 2023. Affirmed.

Shannon S. Crane, of Hutchinson, for appellant.

Thomas R. Stanton, district attorney, and *Derek Schmidt*, attorney general, for appellee.

Before ISHERWOOD, P.J., MALONE and WARNER, JJ.

PER CURIAM: Shanon Williams appeals the district court's denial of his K.S.A. 60-1507 motion, claiming the district court erred when it ruled on the motion without an evidentiary hearing. After carefully reviewing the record and the parties' arguments, we agree with the district court that Williams has not shown that an evidentiary hearing was needed to resolve his claims. And the district court did not err when it concluded that Williams' claims were without merit. We therefore affirm the district court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Williams was convicted of three counts of sexual exploitation of a child. Based on the age of the victim, one of these convictions was a severity level 5 person felony, and

the remaining two were off-grid felonies. Williams was sentenced to two consecutive life sentences without the possibility of parole for 25 years for the two off-grid convictions, followed by a 41-month sentence for the person felony.

This court affirmed Williams' convictions and upheld his consecutive sentences. But we vacated and remanded his case to the district court because the court had erroneously imposed lifetime postrelease supervision—not parole—for his off-grid sentences. *State v. Williams*, No. 114,310, 2017 WL 2833449, at *8 (Kan. App.) (unpublished opinion), *rev. denied* 307 Kan. 993 (2017). On remand, the district court again denied Williams' request for a sentencing departure and imposed the same sentence with the ordered correction. Williams appealed again, claiming that the district court erred in resentencing him by not considering mitigating factors. We affirmed. *State v. Williams*, No. 119,450, 2019 WL 2063623 (Kan. App.) (unpublished opinion), *rev. denied* 311 Kan. 1050 (2019). The appellate mandate issued on February 5, 2020.

In 2020, Williams filed a pro se K.S.A. 60-1507 motion, alleging 38 claims of ineffective assistance of counsel against his trial attorneys and his appellate attorney, as well as 7 errors by the trial court. The district court appointed counsel to represent Williams and held a preliminary, nonevidentiary hearing to assess his claims.

At the preliminary hearing, Williams' attorney urged the court to hold an evidentiary hearing on two of Williams' claims—one challenging how his trial attorneys handled plea negotiations and one challenging how his attorneys addressed a law-enforcement directive that Williams wear a stun vest during the trial:

- The attorney stated that testimony from Williams' trial counsel about the plea-negotiations claim would "probably enlighten the court on that point."

- The attorney argued that "it would be interesting to know why it [the stun vest issue] was not raised at the trial court."

The State argued that an evidentiary hearing was unnecessary because Williams had not shown that his attorneys were ineffective, and he had not demonstrated that wearing the stun vest affected his trial in any way.

The district court took the matter under advisement and denied Williams' motion without an evidentiary hearing. The court found that the records and files of the case conclusively showed that Williams was not entitled to relief on his claim of ineffective assistance of counsel about the stun vest and noted that no objection had been made to the stun vest. And the court found that Williams was not entitled to relief on his plea-negotiations claim because Williams admitted during his sentencing hearing that he was aware of the plea deal but did not want to take it. Williams appeals.

DISCUSSION

K.S.A. 2022 Supp. 60-1507(a) provides a collateral vehicle for incarcerated people to challenge their convictions. A court may resolve a person's K.S.A. 60-1507 motion in three ways. First, the court may summarily deny the motion if the motion, files, and records from the case conclusively show the prisoner is not entitled to relief. Second, the court may order a preliminary hearing and appoint the prisoner counsel if a potentially substantial issue exists. Third, when "the motion and the files of the case" do not "conclusively show that the prisoner is entitled to no relief," the court must hold an evidentiary hearing. K.S.A. 2022 Supp. 60-1507(b); see *Hayes v. State*, 307 Kan. 9, 12, 404 P.3d 676 (2017).

To make the threshold showing necessary to warrant an evidentiary hearing, a K.S.A. 60-1507 motion must make more than conclusory statements. An evidentiary

hearing is not merely a vehicle for a movant to embark on a fishing expedition so that he or she "might catch a fact that could lead to something favorable." *Stewart v. State*, 310 Kan. 39, 54, 444 P.3d 955 (2019). Instead, "it is incumbent upon the movant to show that a triable issue of fact already exists and is identifiable at the time of the motion." 310 Kan. at 54-55. Such information may include further factual development and background, names of witnesses and the nature of their testimony, or other details showing the movant is entitled to relief. *Swenson v. State*, 284 Kan. 931, 938, 169 P.3d 298 (2007). Put another way, the K.S.A. 60-1507 motion must provide some evidentiary basis for its assertions to show why a hearing would be helpful. 284 Kan. at 938.

When the district court denies a K.S.A. 60-1507 motion based only on the motions, files, and records after a preliminary hearing, the appellate court is in just as good a position as the district court to consider the merits. Thus, our standard of review is de novo. *Grossman v. State*, 300 Kan. 1058, 1061, 337 P.3d 687 (2014).

It is unclear from Williams' appeal which of his claims he is asserting warranted an evidentiary hearing. Claims for ineffective assistance of counsel are evaluated under the two-prong standard set forth in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). A movant therefore must show that counsel's performance was deficient and that, but for counsel's deficient performance, there is a reasonable probability the jury would have reached a different result. *Breedlove v. State*, 310 Kan. 56, 64, 445 P.3d 1101 (2019).

Other than summarizing the claims in his original motion and his arguments before the district court—which focused on his plea-negotiations claim and the stun-vest issue—Williams does not explain what evidence may have been presented at an evidentiary hearing. Accord *Requena v. State*, 310 Kan. 105, 107, 444 P.3d 918 (2019) (an issue not briefed on appeal is abandoned).

For example, Williams alleges that his "trial counsel did not do a thorough investigation" and that it is "impossible to know what investigation [the attorneys] did without an evidentiary hearing." But he does not discuss the leads the trial attorneys should have investigated or the evidence they should have presented, other than pointing out that it is unclear whether the attorneys ever interviewed Williams' former wife or the victim. And he does not provide any information the wife or the victim would have offered that was not provided at trial.

Similarly, Williams asserts that his trial attorneys' actions "in not properly investigating and calling witnesses . . . certainly had a prejudicial effect on the jury and on [his] ability to have a fair trial." But he does not explain what investigation his attorneys should have conducted, what witnesses they should have called (and why that testimony, or any new testimony, would have been important), or how this evidence would have affected his case.

It was Williams' burden before the district court to provide a sufficient factual description to explain why an evidentiary hearing was necessary. And it is Williams' burden on appeal to demonstrate why, without such a description, the district court erred in summarily denying his motion. Based on the scant explanation provided to the district court and again on appeal, we conclude Williams has not made this requisite showing.

The district court did not err in summarily denying Williams' K.S.A. 60-1507 motion without an evidentiary hearing.

Affirmed.