

NOT DESIGNATED FOR PUBLICATION

No. 125,198

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

TANISHA L. BRADLEY,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; BRUCE C. BROWN, judge. Submitted without oral argument. Opinion filed October 6, 2023. Appeal dismissed.

Kasper Schirer, of Kansas Appellate Defender Office, for appellant.

Kristi D. Allen, assistant district attorney, *Marc Bennett*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before BRUNS, P.J., CLINE and HURST, JJ.

HURST, J.: Tanisha L. Bradley, in exchange for entering into a plea agreement, pled guilty to battery against a law enforcement officer and attempted robbery. As was permitted, Bradley moved for a downward durational and dispositional departure from the presumptive sentence. The State countered and requested that the district court follow the plea agreement. After hearing arguments, the district court sentenced Bradley to the highest presumptive sentence, resulting in a 47-month imprisonment term. On appeal, Bradley argues that the State misrepresented the plea agreement to the district court,

which resulted in the district court misunderstanding the terms of the plea agreement and thus it erred in its sentencing.

Factual And Procedural Background

The State charged Bradley with aggravated battery against a law enforcement officer, a severity level 4, person felony; and attempted robbery, a severity level 7, person felony, resulting from an incident on June 19, 2021. The district court held a preliminary hearing in which the police officers who witnessed and were involved in the incident testified about Bradley's actions. The details of the incident are immaterial to this court's analysis of Bradley's appellate claims.

On February 28, 2022, Bradley pled guilty to battery against a law enforcement officer and attempted robbery, both severity level 7, person felonies, pursuant to a plea agreement. At the plea hearing, the State explained on the record that in exchange for Bradley's guilty pleas, it would "recommend the high number in the appropriate sentencing grid box on each count. That the counts run consecutively. And the Court follow the presumption of imprisonment." The State also explained that Bradley was "free to seek any alternative disposition, which the State will be free to oppose."

The district court then explained to Bradley that it was not bound by the State's recommendation:

"[T]his is just a recommendation to me about your sentence, this is not binding or controlling on me. The reason is plea agreements are agreements only between a defendant and the prosecutor. Judges, we're not a party to plea agreements so we're not controlled by them, we're not bound to them.

"At sentencing I'm free to impose any penalty that I feel is appropriate, that state law provides for."

The written plea agreement details the terms of the parties' agreement and follows what the prosecutor explained at the hearing:

- a. The State will recommend the following sentences: the high number in the appropriate sentencing gridbox on each count, that the counts run consecutive, and the court follow the presumption of imprisonment.
- b. The State will recommend the sentence imposed in this case run consecutive to any other cases.
- c. Defendant will be free to seek any alternative disposition, which the State will be free to oppose.

The same judge presided over the plea hearing and the sentencing.

According to the presentence investigation (PSI) report prepared before sentencing, Bradley had several prior convictions between 2001 and 2021 causing her to have a criminal history score of A. Bradley's criminal history score resulted in a presumptive sentence of imprisonment for 30-34 months for her battery against a law enforcement officer conviction and 11-13 months imprisonment for her attempted robbery conviction.

Prior to sentencing, Bradley moved for dispositional or durational departure from the presumptive sentences. Bradley argued that the district court should depart from the presumptive sentence because (1) she had accidentally hit the officer while trying to hit someone else, (2) the officer did not experience significant injury, (3) she accepted responsibility for her actions, (4) she caused significantly less harm than usually results for the charged crimes, (5) the reasons for her conduct were unusual, (6) she was remorseful, (7) she had had no problems while out on bond, and (8) the interests of

justice would be better served by having her go through community-based programs rather than sending her to prison.

At the sentencing hearing on April 11, 2022, the district court noted that it had reviewed the plea agreement and Bradley's departure motion. The prosecutor argued for a higher sentencing number:

"I'm asking the court to follow the plea agreement. Frankly, I'm a little bit surprised Officer [C] didn't show up. He expressed to me his belief, all be it not for the full length, compared to what she was originally charged that's where we came up with this middle ground, I guess. We're asking the court to follow the plea agreement."

Bradley's attorney argued for a dispositional or downward departure because the officer's injury was minor, she did not intend to hit the officer, and the situation stemmed from a domestic abuse case that spiraled out of control. Her attorney also argued that "if the court gave [Bradley] an opportunity at probation she would do fine" because she could take a cognitive skills course or whatever other courses or treatment the court deemed appropriate. Bradley spoke on her own behalf and explained that "[a] lot of change has been made since [the incident] which has allowed me to keep my head above water throughout this time frame." She also stated that she "would be willing to take courses, things like this throughout this situation and be able to stay on the rehabilitative path and keep on the straight and narrow."

The district court expressed concern about Bradley's criminal history score of A because since 2004 she had been "just wandering off on different criminal offenses." The district court also expressed concern with Bradley's having served previous probations, and that "[o]nce you get to a particular point probations aren't appropriate any more when they've been tried and implemented and we are back. You know what you need to do. Stay on top of it." The court explained that it considered "all the required factors" and

ordered Bradley to be sentenced to the highest presumptive terms of 34 months and 13 months in prison to run consecutive. This resulted in a total sentence of 47 months in prison.

After sentencing Bradley, the district court explained that it denied her request for a departure sentence because she failed to show substantial and compelling reasons for the departure. The district court then explained how her guilty plea impacted certain other rights, explained her reporting requirements, and told her of the right to appeal. Relevant to this appeal, the court then stated, "I had intended to follow the plea agreement so if I varied in some way that probably was not my intention. Let me know." Neither party raised any concerns or objections at that time of sentencing, and Bradley now appeals.

DISCUSSION

On appeal, Bradley asserts the district court erred in her sentencing and erred by not granting her a durational or dispositional departure. Essentially, Bradley claims the district court erred by not sentencing her to a shorter term of imprisonment or granting her a nonprison term. Bradley's first claim is that the district court erred in her sentencing because it misunderstood the terms of the plea agreement.

I. THE DISTRICT COURT DID NOT ERR IN SENTENCING BRADLEY

As a preliminary matter, before addressing the merits of Bradley's claims, this court must determine whether it has subject matter jurisdiction to hear Bradley's allegations of sentencing error. See *State v. Huerta*, 291 Kan. 831, 840-41, 247 P.3d 1043 (2011) ("If subject matter jurisdiction is in question, that issue needs to be resolved first. The merits come second."). Subject matter jurisdiction is the court's authority or power to hear and decide a particular matter. Determining whether jurisdiction exists is a question of law over which this court exercises unlimited review. *State v. Smith*, 311 Kan. 109, 110-11,

456 P.3d 1004 (2020). The Kansas Court of Appeals has jurisdiction to "correct, modify, vacate or reverse any act, order or judgment of a district court to assure that any such act, order or judgment is just, legal and free of abuse." K.S.A. 60-2101(a). However, the court has no jurisdiction to review "[a]ny sentence that is within the presumptive sentence for the crime." K.S.A. 2022 Supp. 21-6820(c)(1).

Bradley admits that the district court sentenced her within the presumptive sentencing guidelines, which would ordinarily prohibit appellate review of her claim related to sentencing. But Kansas appellate courts have found an exception to this prohibition where the district court misinterpreted or misunderstood its statutory authority and ordered a sentence based on the same. See *State v. Warren*, 297 Kan. 881, Syl. ¶ 1, 304 P.3d 1288 (2013) (when "a district court misinterprets its own statutory authority" the appellate court may address the limited question of whether the district court properly interpreted the sentencing statute).

Bradley argues that this exception should be expanded to apply to circumstances alleged here where the district court misunderstands or misinterprets a plea agreement. Bradley explains that "misinterpretation of a plea agreement is just as detrimental as the misinterpretation of the controlling law." This court is not persuaded that the exception can or should be extended to apply to alleged misunderstandings of plea agreements. In any event, even if the exception applied, Bradley is still without recourse.

Bradley argues that the State misunderstood the plea agreement to contain an agreed-upon sentencing recommendation and that such misunderstanding was conveyed to the district court which then deferred to that misunderstanding. However, the evidence does not support Bradley's allegation that the district court misunderstood the plea agreement.

The prosecutor who signed the plea agreement appeared at both the plea hearing and sentencing and accurately explained to the district court that each party would argue for their own sentencing recommendation. Moreover, Bradley argued for a departure from the presumptive sentence, making it clear that she opposed the State's sentencing requests. Although the prosecutor could have been clearer about the State's position, he did direct the court back to the written plea agreement which contained the State's request for high gridbox sentencing. While Bradley complains that this statement could infer the parties had agreed to a sentencing recommendation, the more obvious understanding is that the prosecutor simply asked the court to follow the State's recommended sentence as expressed in the plea agreement rather than grant Bradley's departure motion.

Additionally, there is no evidence that the district court believed the plea agreement contained an agreed sentencing recommendation. At the plea hearing on February 28, 2022, the State accurately explained that under the plea agreement the State would "recommend the high number in the appropriate sentencing grid box" and Bradley would "be free to seek any alternative disposition, which the State will be free to oppose." The district court then explained to Bradley that "[a]t sentencing I'm free to impose any penalty that I feel is appropriate, that state law provides for."

Then at Bradley's sentencing hearing on April 11, 2022, the district court recognized the existence of both the plea agreement, which the court had reviewed, and Bradley's pending Motion to Depart. After hearing opposing arguments from the parties regarding sentencing, the district court explained why probation may not be productive and denied Bradley's departure motion. The district court then stated Bradley's sentence from the bench and explained various issues before commenting that it "had intended to follow the plea agreement so if I varied in some way that probably was not my intention. Let me know."

The district court was provided with two sentencing recommendations—the State's recommended sentence as described in the plea agreement and Bradley's request for downward or dispositional departure as described in her motion and argument. Considered in context, the district court's statement that it intended to follow the plea agreement demonstrated its intent to adopt the State's recommendation for a high gridbox sentence as described in the plea agreement based on the court's assessment of Bradley's criminal history and the ineffectiveness of her previous terms of probation at preventing her continued criminal conduct. Nothing demonstrates the district court was confused about the content of the plea agreement.

Although there is no evidence that the district court was confused or erroneously believed the plea agreement contained something it did not, even if this court extended the exception outlined in *Warren* to review Bradley's presumptive sentence, such would be unavailing for her. In any event, this court lacks subject matter jurisdiction to consider Bradley's appeal because her sentence was within the presumptive guidelines and no exception applies. K.S.A. 2022 Supp. 21-6820(c)(1).

II. THE DISTRICT COURT DID NOT ERR IN DENYING THE DEFENDANT'S MOTION FOR DURATIONAL AND/OR DISPOSITIONAL DEPARTURE

Bradley finally argues that the district court erred by not granting her departure request based on its mistaken belief that the plea agreement contained an agreed-upon sentencing recommendation. She reasons that "judges are predisposed to follow agreed sentencing recommendations of the parties," and because the district court mistakenly believed the plea agreement contained a jointly recommended sentence, "the district court prejudiced [Bradley's] departure request." In Bradley's estimation, her sentence would have been different had the district court recognized the parties did not agree on the sentencing recommendation in the plea agreement.

Once again, the question of subject matter jurisdiction must be resolved before reaching the merits of Bradley's claim. Such determination is a question of law over which this court exercises unlimited review. *Smith*, 311 Kan. at 111. When, as here, the district court's denial of a motion for departure results in the imposition of a presumptive sentence, the defendant may not appeal the sentence. See *State v. Looney*, 299 Kan. 903, 908-10, 327 P.3d 425 (2014). The Kansas Supreme Court has explained that:

"Merely moving for a departure sentence does not grant the right of appeal to a defendant, if the result of the motion is a presumptive sentence. The only defendants permitted to appeal are those sentenced to an upward departure on the State's motion or the court's notice . . . or those who seek a downward departure to a specific term and who receive the departure but to a term longer than the one sought. [Citations omitted.]" *Huerta*, 291 Kan. at 835-36.

Had the district court granted some amount of departure, then this court would have jurisdiction pursuant to K.S.A. 2022 Supp. 21-6820(a) which provides that "a departure sentence . . . is subject to appeal by the defendant or the state." Bradley's presumptive sentence remains unappealable, despite her denied request for a departure sentence. K.S.A. 2022 Supp. 21-6820(c)(1).

As explained above, because the district court did not misunderstand its statutory authority, no exception permits appellate review. Nor is there any evidence that the district court misunderstood the plea agreement and thus no facts supporting an argument to permit appellate review under an expanded application of the exception outlined in *Warren*. Thus, this court lacks subject matter jurisdiction to reach the merits of Bradley's challenge to the district court's denial of her request for a durational or dispositional departure.

CONCLUSION

Bradley pled guilty to battery on a law enforcement officer and attempted robbery—both person felonies—related to her conduct in June 2021. Although these crimes resulted from a single night, Bradley's criminal history extends far beyond that night. After considering Bradley's motion to depart from the presumptive sentence, her criminal history, her previous experience on probation, and the State's request for a high grid presumptive sentence, the district court determined that Bradley failed to show substantial compelling reasons supporting a departure from the presumptive sentence. This court lacks subject matter jurisdiction to review Bradley's presumptive sentence, and there are no exceptions to that prohibition permitting review. As such, Bradley's appeal is dismissed.

Appeal dismissed.