NOT DESIGNATED FOR PUBLICATION

Nos. 125,250
125,251

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

DALE M.L. DENNEY,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; STEPHEN J. TERNES, judge. Submitted without oral argument. Opinion filed December 22, 2023. Affirmed.

Sam S. Kepfield, of Hutchinson, for appellant, and *Dale M.L. Denney*, appellant pro se.

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

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

PICKERING, J.: Since being convicted of various crimes in the 1990s, Dale M.L. Denney has filed many postconviction motions. In 2018, he moved for relief under K.S.A. 60-2606. The district court found that K.S.A. 60-2606 was an improper vehicle for challenging criminal convictions. Instead, the court considered Denney's motion under K.S.A. 2017 Supp. 60-1507 and summarily denied the motion as untimely and successive. Denney now appeals, claiming the district court erred in denying his motion. Having reviewed the record and finding no error, we affirm.

FACTS

In 1993, Denney was convicted of sexual and weapons crimes in two consolidated cases. The district court imposed a controlling sentence of 228 months' imprisonment in the first case and 30 years to life in prison in the other. The court ordered the two sentences to run consecutive. In 1995, the Kansas Supreme Court affirmed his convictions in *State v. Denney*, 258 Kan. 437, 905 P.2d 657 (1995), with the appellate mandate issuing in 1996.

Since then, Denney has filed numerous postconviction motions, challenging various aspects of his convictions and sentences. Relevant to this appeal, in March 2018, he filed two motions:

- "Motion for Appropriate Relief & K.S.A. 60-2606 Availability of Other Relief" and

- "Motion to Correct an Unconstitutional Conviction and Imprisonment Pursuant to Kansas Constitution Bill of Rights § 6 and All Other Relevant Law."

For both motions, Denney stated that the motions were not to be converted to K.S.A. 60-1507 motions.

As its title suggests in the first motion, Denney seeks relief under K.S.A. 60-2606. He argues that his fundamental rights were violated and, thus, his convictions are void and the sentencing court lacked jurisdiction. Denney also asserts that K.S.A. 60-1507 provides an inadequate remedy for his claims and, therefore, does not apply. Denney's other motion made similar jurisdictional arguments, along with substantive claims about a pretrial competency evaluation, failure to orally instruct the jury, and DNA testing.

In May 2018, the district court summarily denied Denney's K.S.A. 60-2606 motion, finding that K.S.A. 60-2606 was not a proper vehicle for collaterally attacking criminal convictions and sentences. Instead, the district court construed the motion under K.S.A. 2017 Supp. 60-1507. Under this lens, the court found that Denney had filed the motion well past that statute's one-year time limit and had not shown why the court should extend the limit. The district court also found that Denney's motion was successive and there were not any exceptional circumstances that would warrant considering it anyway. A few weeks after the district court denied his motion under K.S.A. 60-2606, Denney timely moved to alter or amend that judgment.

For Denney's other motion, which he had filed concurrent with the K.S.A. 60-2606 motion, the district court appointed counsel and set it for a nonevidentiary hearing on February 14, 2019. This motion has since spawned other appeals, and Denney has not raised it in this appeal. See *Denney v. State*, No. 124,883, 2023 WL 3402876 (Kan. App. 2023) (unpublished opinion), *petition for rev. filed* June 8, 2023; *State v. Denney*, No. 122,105, 2021 WL 3701164 (Kan. App. 2021) (unpublished opinion), *rev. denied* 315 Kan. 969 (2022). For the case presently in front of us, at this February 14 hearing, the district court also appears to have denied Denney's motion to alter or amend its earlier ruling rejecting his K.S.A. 60-2606 motion. However, we are without the transcript as it was not made part of the record on appeal.

After the February 14 hearing, the district court issued its ruling six days later, denying Denney's motion. From that ruling, Denney filed timely pro se notices of appeal. His then-attorney also filed a timely notice of appeal from all adverse rulings during the February 14 hearing. Over two years later, the district court appointed a new attorney to represent Denney on appeal. That attorney, apparently believing that Denney had not filed a valid notice of appeal, moved to do so out of time. The record does not show that the district court ever ruled on this request.

ANALYSIS

Denney argues that he was entitled to relief under K.S.A. 60-2606 because the Legislature has "eroded" the ability to seek meaningful relief under K.S.A. 60-1507. In response, the State contends that we lack jurisdiction over the appeal. But even if we find we have jurisdiction, the district court properly denied relief. Denney filed a pro se supplemental brief reiterating his arguments from below—that K.S.A. 60-1507 provides an inadequate remedy and that the sentencing court lacked jurisdiction because his convictions are void.

We have jurisdiction over Denney's appeal.

In Denney's main brief, his attorney states that he did not file a notice of appeal for the K.S.A. 60-2606 motion until 2022—multiple years late. The State points out that there are timely notices of appeal in the record but asserts that none of them reference the K.S.A. 60-2606 motion and thus are inadequate. The State also notes that the district court never ruled on Denney's motion to appeal out of time.

First and foremost, filing a timely notice of appeal is a jurisdictional requirement. *Albright v. State*, 292 Kan. 193, 197, 251 P.3d 52 (2011). In the notice of appeal, the party must specify the party appealing, the judgment appealed from, and the court the party is appealing to. K.S.A. 2022 Supp. 60-2103(b). Courts liberally construe these requirements, and "a notice of appeal need not be overly technical or detailed." *State v. Laurel*, 299 Kan. 668, 674, 325 P.3d 1154 (2014). Appellate courts also liberally construe pro se filings. *Mundy v. State*, 307 Kan. 280, 304, 408 P.3d 965 (2018).

In a civil case, once the district court enters judgment, an appealing party must file a notice of appeal within 30 days. K.S.A. 2022 Supp. 60-2103(a). A timely postjudgment motion to alter or amend—filed within 28 days after the judgment—tolls this time limit.

See K.S.A. 2022 Supp. 60-259(f); K.S.A. 2022 Supp. 60-2103(a); *In re Estate of Lentz*, 312 Kan. 490, 497, 476 P.3d 1151 (2020).

Here, the record suggests that Denney timely appealed the denial of his K.S.A. 60-2606 motion, despite his attorney's statement to the contrary. The district court entered judgment denying his motion on May 8, 2018. Denney then moved to alter or amend that judgment on May 29—within the 28-day window—thus stopping the 30-day appeal clock.

The district court seems to have denied the motion to alter or amend at the February 14, 2019 hearing, before entering that judgment six days later. The next day—well within the 30-day window—Denney filed pro se notices of appeal. His notices specified that he was appealing the February 14 ruling "denying his Habeas Corpus" to the Court of Appeals. And a few days later his attorney also filed a notice of appeal, which stated that Denney was appealing "all adverse rulings" from the February 14 hearing. Denney therefore timely appealed the denial of his K.S.A. 60-2606 motion after the district court denied his motion to alter or amend that judgment.

The State asserts that Denney's notices of appeal do not mention the K.S.A. 60-2606 motion or the motion to alter or amend and are thus inadequate to confer jurisdiction. But in liberally construing Denney's pro se notices of appeal, we find that his appeal of the February 14 ruling "denying his Habeas Corpus" would naturally include the denial of his motion to alter or amend related to the K.S.A. 60-2606 motion—a habeas corpus motion. The State also does not mention the notice of appeal Denney's former attorney filed, which covered all adverse rulings from the February 14 hearing. Denney's current attorney's motion to file the appeal out of time was unnecessary, and it does not matter if the district court never ruled on it. We, therefore, have jurisdiction.

Denney cannot obtain relief under K.S.A. 60-2606.

Of his two concurrent March 2018 motions, the only one Denney raises on appeal is the K.S.A. 60-2606 motion. As such, we will not consider Denney's other motion, which moves to correct an "unconstitutional conviction and imprisonment." See *State v. Salary*, 309 Kan. 479, 481, 437 P.3d 953 (2019) (failing to brief issue waives or abandons it).

On appeal, Denney argues that he should be able to obtain relief under K.S.A. 60-2606 and thus avoid application of the one-year time limit in K.S.A. 2017 Supp. 60-1507(f)(1). K.S.A. 60-2606 provides that "[i]f a case arises in which an action or proceeding for the enforcement or protection of a substantive right, or the redress or prevention of a wrong, cannot be had under any specific provisions of this chapter or other statutes[,]" then a court should proceed anyway and "do whatever law and equity and justice require for the protection of the parties." In other words, a party can still seek to enforce his or her rights when Kansas law does not otherwise provide a specific way to do so.

Importantly, the Kansas Supreme Court has consistently recognized that K.S.A. 60-2606 is an improper vehicle for postconviction challenges. See *State v. Sellers*, 301 Kan. 540, 544, 344 P.3d 950 (2015). Rather, "K.S.A. 60-1507 provides the exclusive statutory procedure for collaterally attacking a criminal conviction and sentence. " *State v. Kingsley*, 299 Kan. 896, Syl. ¶ 1, 326 P.3d 1083 (2014). "The exclusive nature of K.S.A. 60-1507 likewise excludes K.S.A. 60-2606 as a procedural mechanism for relief from [a movant's] convictions and sentences." *Kingsley*, 299 Kan. at 900.

In this case, K.S.A. 2017 Supp. 60-1507 is the exclusive vehicle for such challenges. Denney thus cannot use K.S.A. 60-2606 to collaterally attack his convictions. We must follow Kansas Supreme Court precedent absent some indication that our

Supreme Court is departing from a previous position. *State v. Rodriguez*, 305 Kan. 1139, 1144, 390 P.3d 903 (2017). The district court did not err in finding that Denney could not seek relief under K.S.A. 60-2606 and interpreting his motion under K.S.A. 2017 Supp. 60-1507.

With K.S.A. 2017 Supp. 60-1507 governing Denney's motion, he had to follow that statute's procedural requirements. One requirement is that a person generally must file a K.S.A. 60-1507 motion within one year after his or her direct appeal concludes. K.S.A. 2017 Supp. 60-1507(f)(1). But for movants like Denney, whose claims preexist the statutory amendment that created this one-year deadline, the deadline for filing a timely K.S.A. 60-1507 motion was June 30, 2004. See L. 2003, ch. 65, § 1; *Noyce v. State*, 310 Kan. 394, 399, 447 P.3d 355 (2019). A court may extend this time limit "only to prevent a manifest injustice." K.S.A. 2017 Supp. 60-1507(f)(2).

Many years after both Denney's 1996 direct appeal and the later 2004 deadline, he filed the motion at issue in 2018. The one-year filing deadline in K.S.A. 2017 Supp. 60-1507 therefore prevents Denney from seeking meaningful postconviction relief. He acknowledges that if we find he cannot seek relief under K.S.A. 60-2606, then his motion would be untimely under K.S.A. 2017 Supp. 60-1507. Indeed, he concedes that his claims are time-barred under this statute. But Denney does not suggest that we should extend the one-year filing time limit to prevent a manifest injustice. Thus, the district court did not err in summarily denying Denney's postconviction motion as untimely under K.S.A. 2017 Supp. 60-1507.

In his supplemental brief, Denney notes that K.S.A. 60-1507 is not always an exclusive remedy and the Kansas Supreme Court has recognized that "there may be circumstances when a K.S.A. 60-1507 motion is 'inadequate or ineffective to test the legality' of a movant's custody. In such circumstances, another type of challenge would be appropriate." *Sellers*, 301 Kan. at 545; Supreme Court Rule 183(b) (2023 Kan. S. Ct.

R. at 243). But Denney does not explain why K.S.A. 2017 Supp. 60-1507 is inadequate or ineffective here. His inability to meet that statute's procedural requirements does not exempt him from having to follow them.

The district court also found that Denney's motion was successive. See K.S.A. 2017 Supp. 60-1507(c) ("The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner."). We need not reach successiveness given that Denney's motion was untimely, but the district court was correct that it was successive, too.

Indeed, another panel of this court recently considered and rejected the main claim in Denney's K.S.A. 60-2606 motion—that his convictions are void, thus depriving the courts of jurisdiction over them. *Denney*, 2023 WL 3402876, at *3. Denney concedes that the issues in that appeal "are basically the same" as here. In both cases, his claims are untimely, and he cannot bypass procedural requirements by calling his convictions void or couching them in jurisdictional terms. 2023 WL 3402876, at *3.

In conclusion, we have jurisdiction over the appeal, and the district court did not err in summarily denying Denney's K.S.A. 60-2606 motion.

Affirmed.