

NOT DESIGNATED FOR PUBLICATION

No. 125,255

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

CHRISTOPHER J. MINAHAN,
Appellant,

v.

STATE OF KANSAS,
Appellee.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; TYLER J. ROUSH, judge. Opinion filed May 19, 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 BRUNS, P.J., CLINE and HURST, JJ.

PER CURIAM: Christopher J. Minahan appeals from the district court's summary denial of his K.S.A. 60-1507 motion seeking vacation of his conviction and sentence for criminal possession of a weapon by a felon. Minahan argues that an intervening change in the law renders this conviction unconstitutional. But because Minahan pleaded guilty to this charge to benefit from a favorable plea agreement, we find that he waived his right to collaterally attack his conviction.

FACTS

Minahan pleaded guilty under a global plea agreement to one count of violating the Kansas Offender Registration Act (KORA) and one count of criminal possession of a weapon by a felon. This plea agreement disposed of the charges against Minahan in two separate criminal cases.

The probable cause affidavit reflects that Minahan's conviction for criminal possession of a weapon was based on his possession of a folding knife.

In return for Minahan's plea, the State agreed to dismiss a separate count of possession of drug paraphernalia in one of his criminal cases and to recommend that the district court impose a dispositional departure to probation.

At Minahan's April 2019 sentencing, the district court followed these recommendations, granting Minahan a dispositional departure to 24 months' probation. The court imposed an underlying sentence of 26 months' imprisonment for Minahan's conviction for violating KORA and 17 months' imprisonment for his criminal possession of a weapon by a felon conviction, running the sentences consecutive.

Soon after, Minahan admitted to violating the terms of his probation and the district court sanctioned him with 72 hours in county jail. Roughly a year later, Minahan admitted to once again violating the conditions of his probation and to committing a new crime. The district court revoked Minahan's probation and imposed his underlying prison sentences.

In January 2021 Minahan moved under K.S.A. 60-1507 to vacate his conviction and sentence for criminal possession of a weapon by a felon. He based his claim on the Kansas Supreme Court's opinion in *State v. Harris*, 311 Kan. 816, 467 P.3d 504 (2020).

There, the court held that the residual clause in K.S.A. 2019 Supp. 21-6304(d)(1)—which defines a "[k]nife" for the purposes of criminal possession of a weapon by a felon as "a dagger, dirk, switchblade, stiletto, straight-edged razor or *any other dangerous or deadly cutting instrument of like character*"—was unconstitutionally vague. (Emphasis added.) 311 Kan. at 826. Since Minahan was convicted based on possession of a folding knife—rather than a dagger, dirk, switchblade, stiletto, or straight-edged razor—he argued that he must have been convicted under the residual clause. He thus argued that his conviction and sentence were unconstitutional and should be vacated.

The district court summarily dismissed Minahan's motion, finding that *Harris* did not apply retroactively to sentences that were final when it was published.

Minahan timely appeals from this ruling.

ANALYSIS

On appeal, Minahan argues that the district court erred in summarily dismissing his motion because *Harris* involved a question of substantive law and thus applies retroactively to invalidate his conviction and sentence for criminal possession of a weapon.

While the State opposed Minahan's motion below by arguing *Harris* did not have retroactive effect, it now admits this was wrong. On appeal, the State concedes that *Harris* is a new rule of substantive law with retroactive effect. Yet the State argues that Minahan is still not entitled to relief since he waived any right to challenge his conviction by entering into a beneficial plea agreement. Thus, it essentially asks us to find the district court was right for the wrong reason. See *State v. Williams*, 303 Kan. 585, 595, 363 P.3d 1101 (2016) (affirming judgment as right for the wrong reason).

Under K.S.A. 2022 Supp. 60-1507(a), a prisoner can move to vacate a sentence because the sentence was imposed in violation of the United States Constitution. Unless the motion, files, and records of the case conclusively show that the prisoner is entitled to no relief, the district court must grant a hearing on the motion. K.S.A. 2022 Supp. 60-1507(b). In reviewing summary denial of a K.S.A. 60-1507 motion, appellate courts apply a de novo standard of review. *Edgar v. State*, 294 Kan. 828, 836-37, 283 P.3d 152 (2012).

The State argues that a defendant waives the right to attack any underlying infirmity in the charge to which he or she pled, even though the crime itself may not exist if: (1) the defendant initially was brought into court on a valid complaint; (2) received a beneficial plea agreement; and (3) voluntarily, knowingly, and intelligently entered into the plea agreement. See *Easterwood v. State*, 273 Kan. 361, 383, 44 P.3d 1209 (2002) (prisoner, who had the opportunity to challenge his felony-murder charge but knowingly and willingly waived that right to benefit from a favorable plea agreement involving the dismissal of other charges, was bound by his plea agreement), *superseded by statute on other grounds as stated in Vontress v. State*, 299 Kan. 607, 325 P.3d 1114 (2014); *Spencer v. State*, 24 Kan. App. 2d 125, 129, 942 P.2d 646 (1997) (a party may plead guilty to a nonexistent crime if knowingly doing so in order to obtain a beneficial plea agreement), *aff'd on other grounds* 264 Kan. 4, 954 P.2d 1088 (1998).

In *Easterwood*, the prisoner pleaded guilty to felony murder after he and a partner attempted to rob a store and his partner was killed by the police. Several years later, the Kansas Supreme Court determined the felony-murder rule did not apply when another criminal participant was killed during the crime by the lawful act of a police officer. *State v. Sophophone*, 270 Kan. 703, 713, 19 P.3d 70 (2001). Easterwood moved for relief under K.S.A. 60-1507, arguing that his conviction for felony murder should be overturned based on *Sophophone*. The court rejected his argument, holding that Easterwood, who knowingly waived the right and opportunity to challenge his conviction

at trial or through a direct appeal and pleaded guilty to obtain the dismissal of other charges against him, could not collaterally attack his conviction in a K.S.A. 60-1507 motion. *Easterwood*, 273 Kan. at 383.

The State argues that, like *Easterwood*, Minahan knowingly waived the right to challenge any constitutional infirmity in his conviction or sentence by voluntarily, knowingly, and intelligently entering into a beneficial plea agreement. As a result, the State claims, Minahan is not entitled to relief under *Harris*.

Minahan concedes that *Easterwood* would preclude him from relief if he received a beneficial plea agreement. But he claims his plea agreement was not sufficiently beneficial to trigger the *Easterwood* rule. He claims to have only received a minimal benefit from the plea agreement—the dismissal of a class B nonperson misdemeanor charge for possession of drug paraphernalia. And he argues that given his criminal history score of D, his presumptive sentence for the criminal possession of a weapon charge was probation, so he received no benefit from the State's agreement to recommend probation.

As the State notes, however, Minahan does not appreciate all the benefits he received under his plea agreement. Without addressing the substance of the benefit he received in the dismissal of the third criminal charge, Minahan ignores that the presumptive sentence for his KORA conviction was prison due to the application of "Special Rule No. 46," i.e., K.S.A. 2018 Supp. 21-6804(m). Instead of following that presumption, the State agreed to recommend a dispositional departure to probation for this charge. Moreover, nothing in the court's decision in *Easterwood* requires the State to demonstrate that the defendant received a minimum benefit level to trigger application of its public policy holding.

Minahan does not contest that he was initially brought into court on a valid complaint and that he voluntarily, knowingly, and intelligently entered into the plea

agreement. And we find he received a benefit from pleading guilty to the criminal possession of a weapon charge. Therefore, he is not entitled to relief on his K.S.A. 60-1507 motion. We thus affirm the district court's summary dismissal as correct for the wrong reason.

Affirmed.