NOT DESIGNATED FOR PUBLICATION

No. 125,272

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

LYLE P. MCCLANAHAN,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; TYLER J. ROUSH, judge. Opinion filed September 29, 2023. Affirmed in part and dismissed in part.

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 HILL, P.J., HURST, J., and TIMOTHY G. LAHEY, S.J.

PER CURIAM: Lyle McClanahan appeals the imposition of lifetime postrelease supervision as part of his sentence following his guilty plea to two counts of aggravated sexual battery. He raises two issues. First, McClanahan argues that the district court erred by engaging in judicial fact-finding to determine his age at the time he committed the crimes. A defendant's age is not an element of the crime but is relevant in determining the length of postrelease supervision. Here, because McClanahan admitted to being over 18 years old and was convicted of sexually violent crimes, we find the district court properly imposed lifetime postrelease supervision under K.S.A. 2019 Supp. 22-3717(d)(1)(G)(i).

McClanahan's second claim is that the district court misinterpreted the plea agreement when it imposed McClanahan's sentence. Because the district court imposed the presumptive guideline sentence, in accord with the terms contemplated by the plea agreement, we lack jurisdiction under K.S.A. 2022 Supp. 21-6820(c)(1) to consider McClanahan's contention that the district court misunderstood the plea agreement. We consequently dismiss this claim but affirm the district court imposing lifetime postrelease supervision.

FACTUAL AND PROCEDURAL BACKGROUND

In March 2020, the State charged McClanahan with one count each of rape, attempted aggravated criminal sodomy, possession of methamphetamine, and possession of marijuana. The charges were amended twice in April 2022, resulting in McClanahan ultimately facing two counts of aggravated sexual battery and one count each of kidnapping, attempted aggravated criminal sodomy, felony possession of methamphetamine, and misdemeanor possession of marijuana.

McClanahan agreed to plead guilty to the two counts of aggravated sexual battery, possession of methamphetamine, and possession of marijuana. In exchange for McClanahan's pleas, the State agreed to dismiss the remaining counts. McClanahan's guilty plea was based on *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27, L. Ed. 2d 162 (1970) (defendant allowed to plead guilty to take advantage of plea agreement while maintaining his or her innocence). In the plea agreement, the State recommended the presumptive guideline sentence of prison and requested the mid-number in the appropriate sentencing grid box and that the sentences run consecutive for the nondrug felony counts. McClanahan agreed he would not seek a departure from his presumptive prison sentence, but he was free to ask the court to impose the low number in the sentencing grid box and to seek concurrent sentences.

At the time of his plea, McClanahan signed a written acknowledgment of rights and entry of plea form, which included his handwritten admission that he was 40 years old and that his postrelease supervision period is for "[l]ife." There was also a written plea agreement, signed by McClanahan, in which he "acknowledges being 18 years of age or older at the time of the offense(s)"; "[t]his is a case requiring lifetime post-release supervision per KSA 22-3717(d)(1)(G) & (d)(5)," and "I understand and voluntarily accept the plea agreement set out in this document."

At the plea hearing, upon the court's request, the State read its understanding of the sentencing portion of the plea agreement into the record:

- "The State agrees to recommend the mid-number in the appropriate sentencing guidelines grid box for the felony counts and six months jail on the misdemeanor count."

- "The State agrees to recommend that Counts 1 and 6 run consecutively to each other. And defendant is free to argue for concurrent sentencing."

- "Both parties are free to recommend the statutory presumption for prison be followed. And the defendant is agreeing to serve his sentence in prison. And the defendant is not free to seek any departures."

- "The defendant further acknowledges his duty to register pursuant to the Kansas Offender Registration Act. And that this case requires lifetime post-release."

The court then asked McClanahan and his attorney if this reflected their understanding of the plea agreement, and both agreed that it did.

The court informed McClanahan that it was not bound by the terms of the plea agreement and laid out the maximum possible penalties, noting there was no guarantee of concurrent sentences. The court told McClanahan that he would be subject to lifetime postrelease supervision. The State presented the factual basis for the plea, and McClanahan reaffirmed his decision to plead guilty under *Alford*.

At the sentencing hearing, the State requested that the court follow the sentencing recommendation in the plea agreement and asked for "mid number on the felonies, 6 months jail on the misdemeanor, that [the aggravated sexual battery counts] run consecutively for a total of 73 months KDOC." The State again pointed out that "[t]here is lifetime post-release" and asked the court to impose presumptive prison.

McClanahan's attorney presented arguments in favor of imposing the low grid numbers and running the sentences concurrent. No argument was made against the imposition of lifetime postrelease supervision. Before pronouncing his sentence, the court gave McClanahan a chance to speak on his own behalf. McClanahan expressed that he was taking the *Alford* plea, but he was innocent of sexual assault and reaffirmed his counsel's request for the low grid number and concurrent sentences.

The district court followed the State's sentencing recommendation using the midrange grid numbers for the felony counts, with the aggravated sexual battery charges running consecutive and the remaining sentences running concurrent for a controlling sentence of 73 months. The court ordered lifetime postrelease supervision for the aggravated sexual battery counts.

McClanahan appeals.

ANALYSIS

I. *The district court properly sentenced McClanahan to lifetime postrelease supervision based on McClanahan's admission he was 18 years of age or older.*

Our Legislature's sentencing instructions on lifetime postrelease supervision for sexually violent crimes are contained in K.S.A. 2022 Supp. 22-3717(d)(1)(G). Under this statute, the length of a postrelease supervision term for a person convicted of a sexually violent crime depends on the offender's age:

> "(i) Except as provided in subsection (u), persons sentenced to imprisonment for a sexually violent crime . . . *when the offender was 18 years of age or older* . . . shall be released to a mandatory period of postrelease supervision *for the duration of the person's natural life*."
>
> "(ii) Persons sentenced to imprisonment for a sexually violent crime committed on or after the effective date of this act, *when the offender was under 18 years of age* . . . shall be released to a mandatory period of postrelease supervision *for 60 month*s." (Emphases added.) K.S.A. 2022 Supp. 22-3717(d)(1)(G)(i) and (ii).

Thus, a person sentenced under this statute who is 18 years or older receives a lifetime postrelease supervision term, while a person who is under 18 receives a 60-month postrelease supervision term. K.S.A. 2022 Supp. 22-3717(d)(1)(G)(i) and (ii).

In *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), the United States Supreme Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." But the Court later clarified that a defendant's admitted or stipulated facts may be used to impose a sentence beyond the statutory maximum without violating *Apprendi*. *Blakely v. Washington*, 542 U.S. 296, 303, 124 S. Ct. 2531, 2541, 159 L. Ed. 2d 403 (2004) (The relevant statutory maximum for *Apprendi* purposes is the maximum a judge may impose

based solely on the facts reflected in the jury verdict *or admitted by the defendant*.); see also *United States v. Booker*, 543 U.S. 220, 244, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005).

To begin, McClanahan acknowledges that he did not raise this issue in district court. And in general, a constitutional challenge may not be asserted for the first time on appeal. *State v. Anthony*, 273 Kan. 726, 727, 45 P.3d 852 (2002). But both this court and the Kansas Supreme Court have addressed similar *Apprendi* challenges for the first time on appeal because they involve purely legal questions and undisputed facts. *Anthony*, 273 Kan. at 727; *State v. Schmeal*, No. 121,221, 2020 WL 3885631, at *8 (Kan. App.) (unpublished opinion), *rev. denied* 312 Kan. 900 (2020). Thus, McClanahan's appeal is properly before this court. And this court has unlimited review over McClanahan's *Apprendi* challenge because it involves a pure question of law. *Anthony*, 273 Kan. at 727.

Here, the district court properly sentenced McClanahan to lifetime postrelease supervision under K.S.A. 2019 Supp. 22-3717(d)(1)(G) because he received a prison term for aggravated sexual battery—a sexually violent crime under K.S.A. 2019 Supp. 22-3717(d)(5)(I)—and McClanahan admitted he was over 18 years old when he committed the crimes.

A. *The district court did not engage in judicial fact-finding in violation of* Apprendi *by sentencing McClanahan to lifetime postrelease supervision.*

K.S.A. 2022 Supp. 22-3717(d)(1)(G)(i) *requires* district courts to sentence those 18 years or older—who are convicted of sexually violent crimes—to lifetime postrelease supervision, just as K.S.A. 2022 Supp. 22-3717(d)(1)(G)(ii) *requires* district courts to sentence those less than 18 years old to 60 months of postrelease supervision. Stated another way, every person convicted of a sexually violent crime receives either a 60-

month or lifetime postrelease supervision term, and the determining factor is the age of the offender at the time of the commission of the crime.

When the age of a defendant is not an element of the underlying sexually violent crime and the defendant enters a guilty plea, his or her age is not a necessary part of the factual basis for the plea. However, the age of an offender is typically disclosed in various ways in the case record and often by the defendant's own admission. Here, nobody disagrees that McClanahan admitted to being over 18 years old when he committed the crimes. On the acknowledgment of rights and entry of plea form, McClanahan wrote in blue ink that he was "40" years old at the time of his plea. And when the court asked his age at the plea hearing, McClanahan confirmed that he was 40 years old, and further informed the court that he had completed 16 years of schooling, including four years of college. In the plea agreement itself, McClanahan acknowledged he was "18 years of age or older at the time of the offense(s)." Finally, nowhere in the record below or in this appeal does McClanahan contend, or any evidence suggest, that he was less than 18 years of age when he committed the offenses. Thus, there is undisputed evidence in the record supporting the imposition of lifetime postrelease supervision as provided for in K.S.A. 2019 Supp. 22-3717(d)(1)(G)(i). McClanahan's multiple admissions concerning his age obviate the need for the type of judicial fact-finding prohibited by *Apprendi.* The United States Supreme Court held in *Blakely* that factual admissions are an exception to *Apprendi*. *Blakely*, 542 U.S. 303. Consistent with *Blakely*, McClanahan's admissions of his age suffice to provide the factual basis for the district court's sentencing decision.

The specific issue of whether a defendant's admission of his or her age can be used by the district court to form the factual basis for imposing lifetime postrelease supervision, without violating *Apprendi*, has been raised in numerous unpublished appeals before our court. Panels of this court have uniformly found that reliance on a

defendant's admission of age as the basis for imposition of postrelease supervision does not constitute improper judicial fact-finding under *Apprendi*.

For example, in *State v. Reinert*, No. 123,341, 2022 WL 1051976, at *4 (Kan. App.) (unpublished opinion), *rev. denied* 316 Kan. 762 (2022), a panel of this court found no *Apprendi* violation when the district court sentenced Reinert to lifetime postrelease supervision because he admitted he was 25 years old when requesting an attorney and did not object to a presentence investigation report listing his age. *Reinert* held that a term of lifetime postrelease supervision "is distinguishable from cases like *Apprendi*, where the statute authorized the sentencing court to increase an offender's sentence if it independently determined that he or she committed the crime because of the victim's race." 2022 WL 1051976, at *4 (citing *Apprendi*, 530 U.S. at 468-69). In considering K.S.A. 2019 Supp. 22-3717(d)(1)(G), *Reinert* persuasively noted that "the statute places adults . . . who plead guilty to sexually violent crimes, into a category with one possible sentence." 2022 WL 1051976, at *4. And it added that "because the statute does not require the court to find a substantial and compelling reason to impose it, lifetime postrelease supervision is the statutory presumptive sentence, not an upward departure from the statutory maximum." 2022 WL 1051976, at *3-4.

In *Schmeal*, the panel found it proper for the district court to impose lifetime postrelease supervision because Schmeal admitted he was 19 years old on a plea agreement and a financial affidavit. 2020 WL 3885631, at *8-9; see also *State v. Entsminger*, No. 124,800, 2023 WL 2467058, at *6-8 (Kan. App.) (unpublished opinion) (defendant admitted age in a written plea agreement, signed a notice to register under KORA including his birthdate, and did not object to his age in the presentence investigation report at sentencing), *petition for rev. filed* April 4, 2023; *State v. Kewish*, No. 121,793, 2021 WL 4352531, at *3-4 (Kan. App. 2021) (unpublished opinion) (defendant admitted his age in his no-contest plea, confirmed the accuracy of his age in his notice to register, and his dispositional departure motion included his current age and

date of birth), *rev. denied* 316 Kan. 761 (2022); *State v. Zapata*, No. 120,529, 2020 WL 741486, at *8-9 (Kan. App.) (unpublished opinion) (defendant admitted his age as part of his plea), *rev. denied* 312 Kan. 901 (2020); *State v. Haynes*, No. 120,533, 2020 WL 741458, at *3 (Kan. App.) (unpublished opinion) (defendant acknowledged his age on the financial affidavit and plea document, and admitted his age to the district court at the plea hearing to an independent therapist), *rev. denied* 312 Kan. 896 (2020); *State v. Cook*, No. 119,715, 2019 WL 3756188, at *2 (Kan. App. 2019) (unpublished opinion) (charging documents listed Cook's birthday in the captions and Cook wrote his age on an acknowledgment of rights and entry of plea form), *rev. denied* 312 Kan. 895 (2020).

We agree with the reasoning followed in the foregoing cases that a defendant's admission of facts is a recognized exception to *Apprendi*. As succinctly summarized in *Kewish*, when rejecting the defendant's argument that the court violated *Apprendi* by ordering lifetime postrelease supervision based on the defendant's admission that he was over 18 years old:

> "'[The defendant] ignores some fundamental points of law. The "'statutory maximum' for *Apprendi* purposes is the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant*." *Blakely v. Washington*, 542 U.S. 296, 303, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). Then, in *United States v. Booker*, 543 U.S. 220 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005), the United States Supreme Court recognized an exception to the *Apprendi* rule when the defendant admits a fact. 543 U.S. at 244. We have admissions by [the defendant] that lead us to conclude that there is no *Apprendi* violation here.'" *Kewish*, 2021 WL 4352531, at *4 (quoting *Cook*, 2019 WL 3756188, at *2).

McClanahan acknowledges the foregoing line of cases but contends they were wrongly decided. Instead, he urges the panel to adopt the reasoning of the dissent in *Schmeal*, a case involving similar facts to McClanahan's case. The facts of *Schmeal* are similar to our present case. Schmeal pleaded no contest to one count of indecent liberties

with a child. Like McClanahan, Schmeal admitted to being over 18 during his plea proceedings, and was sentenced to lifetime postrelease supervision. On appeal, Schmeal argued that the district court engaged in improper judicial fact-finding under *Apprendi* by using his age to impose lifetime postrelease supervision.

The majority found that because Schmeal admitted his age, "the district court's finding that he was at least 18 years old when he committed the crime of conviction falls under the *Blakely* exception to the *Apprendi* rule." *Schmeal*, 2020 WL 3885631, at *9. As such, the majority expressly found that it was unnecessary for "the State [to] obtain a waiver from him voluntarily relinquishing his right to jury trial on the issue of age for purposes of imposing lifetime postrelease supervision." 2020 WL 3885631, at *9.

But unlike the majority, the dissent in *Schmeal* found an *Apprendi* violation because the trial court did not obtain a specific waiver of jury trial on the issue of defendant's age. *Schmeal*, 2020 WL 3885631, at *11-19 (Atcheson, J., dissenting).

The crux of McClanahan's *Apprendi* argument is that, although he admitted his age, he did not knowingly and voluntarily waive his right to have a jury decide it for the purposes of imposing lifetime postrelease supervision. Here, although the district court fully informed McClanahan that he had the right to have a jury determine whether or not he was guilty of the crime of aggravated sexual battery, it did not specifically advise McClanahan that he had the right to have a jury determine his age. McClanahan contends he cannot be subjected to lifetime postrelease supervision without offending *Apprendi*.

The dissent in *Schmeal* relied heavily on *State v. Duncan*, 291 Kan. 467, Syl. ¶¶ 1-2, 243 P.3d 338 (2010), where the Kansas Supreme Court held that a district court must specifically advise criminal defendants of their right to have a jury determine an aggravating factor resulting in an upward durational departure sentence and that a defendant must specifically waive that right.

Duncan pleaded guilty to aggravated battery. As part of his plea agreement, Duncan agreed to an underlying upward durational departure to 48 months' imprisonment in exchange for a downward dispositional departure to probation. But the "terms of the plea agreement did not explicitly state Duncan was waiving his right to have a jury determine whether any aggravating factors existed to permit an upward durational departure." 291 Kan. at 468. Duncan's probation was later revoked, and he was ordered to serve his underlying 48-month sentence. He appealed his probation revocation, "challenging whether the previously agreed-to upward durational departure was legal because he did not explicitly waive his right to have a jury determine whether there were aggravating factors to invoke that departure." 291 Kan. at 469. The Kansas Supreme Court reversed Duncan's sentence because "the district court [and the plea agreement] did not advise Duncan that he had a right to a jury determination of the aggravating sentencing factors." 291 Kan. at 472. The rationale of the dissent in *Schmeal* would similarly suggest we reverse the order here for lifetime postrelease supervision.

We find the facts in *Duncan* to be appreciably distinguishable from McClanahan's situation. *Duncan* did not concern a defendant's factual admissions—Duncan was not admitting specific facts that would form the basis for an increased sentence. Rather, Duncan simply agreed to an upward departure sentence without admitting any facts justifying "increas[ing] the penalty for a crime beyond the prescribed statutory maximum." *Apprendi*, 530 U.S. 490. *Duncan* held that a more specific waiver was needed to consent to judicial fact-finding, not that a specific waiver is needed for a defendant's factual admissions. And this distinction adheres to *Blakely*, providing that "[w]hen a defendant pleads guilty, the State is free to seek judicial sentence enhancements so long as the defendant *either stipulates to the relevant facts or consents to judicial factfinding*." (Emphasis added.) 542 U.S. at 310. Thus, the majority in *Schmeal* persuasively reasons that an additional waiver was not needed for Schmeal to be sentenced to lifetime postrelease supervision because he admitted his age.

Finally, we note that Duncan was also statutorily entitled to a jury trial under K.S.A. 21-4718(b) to determine upward departure factors. No statute entitled McClanahan to a jury determination of his age, and McClanahan's sentence was not the result of a departure—he received a sentence well within the guidelines. We find *Duncan* does not support a conclusion that the district court was required to obtain a jury waiver before using McClanahan's admission of age to sentence him to lifetime postrelease supervision.

McClanahan briefly argues that admitting his age does not excuse the State from submitting it to a jury, using an analogy to Jessica's Law sentences. He points out that Jessica's Law sentences—like lifetime postrelease supervision—require a finding of the defendant's age. K.S.A. 2022 Supp. 21-6627 (Jessica's Law); *State v. Bello*, 289 Kan. 191, 200, 211 P.3d 139 (2009). If evidence of age is presented to a jury, a Jessica's Law sentence may be properly imposed. 289 Kan. at 199. But if it was not, a Jessica's Law sentence must be vacated. 289 Kan. at 199-200. In line with Jessica's Law cases, McClanahan argues that his sentence should be vacated because there was no jury to hear his age.

Yet unlike McClanahan's sentence, Jessica's Law sentences extend beyond the statutory maximum. 289 Kan. at 199-200. And the Jessica's Law cases cited by McClanahan involve only jury trials and do not address the circumstance we face here—an admission by the defendant of his age in the context of a plea agreement. We are thus unpersuaded by McClanahan's argument.

B. *Even if an* Apprendi *violation had occurred, it would have been harmless.*

McClanahan claims that the State could not have secured a lifetime postrelease supervision sentence "but for the erroneous judicial finding." *Apprendi* violations are

subject to a harmless error review. *State v. Garza*, 290 Kan. 1021, 1031, 236 P.3d 501 (2010). An error is harmless if a court concludes beyond a reasonable doubt that the relevant sentencing factor was uncontested and supported by overwhelming evidence, such that the jury would have reached the same verdict absent the error. 290 Kan. at 1031 (citing *Neder v. United States*, 527 U.S. 1, 17-19, 119 S. Ct. 1827, 144 L. Ed. 2d 35 [1999]) (harmless error applies when a court fails to submit an uncontested element to the jury). McClanahan does not acknowledge this point of law. McClanahan instead contends *Apprendi requires* the State to produce evidence of his age to a *jury* and "[t]he State's failure to present evidence of age to a jury cannot be harmless." He notes the absence of a statutory procedural mechanism for a jury to be empaneled, following his plea, to determine his age for sentencing purposes.

Recently, the Kansas Supreme Court held that harmless error review applies to situations where the district court fails to obtain a constitutional jury trial waiver before a person stipulates to an element of a charged crime. *State v. Bentley*, 317 Kan. 222, 233-34, 526 P.3d 1060 (2023) (extending *Neder* to instances of "a trial court's failure to obtain a sufficient jury trial waiver before a defendant stipulates to element of a crime").

In that case, a jury convicted Bentley of two counts of possession of a weapon by a felon. Bentley stipulated to having a prior felony conviction—an element of the crime charged—without receiving a jury waiver. Bentley appealed, arguing this as structural error. A panel of this court reversed his convictions accordingly. *State v. Bentley*, No. 123,185, 2022 WL 1278482 (Kan. App. 2022) (unpublished opinion), *rev'd* 317 Kan. 222, 526 P.3d 1060 (2023). But on review, the Kansas Supreme Court disagreed, applying the harmless error analysis identified above. 317 Kan. at 235-36.

The Supreme Court found that there was no reasonable probability that Bentley would have changed his decision to stipulate to his prior felony conviction if the district court had obtained a jury waiver. 317 Kan. at 235-36. Thus, any error was harmless

because it would not have changed the outcome of his case. The court noted that Bentley made the decision to stipulate to keep his prior conviction out of the jury's knowledge. 317 Kan. at 236. And the court observed that "these were easily provable elements and Bentley would have had no defense had the State offered evidence to establish these elements." 317 Kan. at 235.

Applying a similar analysis to McClanahan's case leads us to conclude that there is no reasonable probability that McClanahan would have changed his decision to admit his age if the district court had obtained a specific jury waiver on that point. McClanahan's age is easily proved, and he did not and does not contend that there exists some factual basis upon which a jury might conclude he was less than 18 years old at the time of his offenses. The records from the plea and sentencing hearings contain only undisputed evidence that McClanahan was over 18 years old when he committed the crimes, including his own admissions. And as noted earlier, McClanahan is not contending that he was less than 18 years old at the time of the crimes. McClanahan waived his right to a jury trial for the crimes with which he was charged and that waiver, and subsequent plea, are the reasons he was sentenced to prison and subject to postrelease supervision. We can conceive of no factual or strategic reason why McClanahan would waive a jury trial on the elements of the offense but insist on a jury trial over his age. We see no reasonable probability that McClanahan would have changed his decision to admit his age if the district court had obtained a jury waiver. And previous panels of this court have reached the same conclusion when—as here—a person's age was never contested, and the record, in the absence of a jury trial, contained nothing but undisputed evidence on the question of age. *Reinert*, 2022 WL 1051976, at *4; *Schmeal*, 2020 WL 3885631, at *11. We conclude that any possible *Apprendi* error in failing to obtain a jury waiver is harmless.

II. *We lack jurisdiction over McClanahan's claim that the district court misinterpreted the sentencing portion of the plea agreement.*

McClanahan seeks review of his presumptive sentence, arguing that the district court erred by misinterpreting the plea agreement. He does not contend the district court failed to impose a sentence consistent with the terms of the plea agreement. Nonetheless, McClanahan bases his misinterpretation claim on a single comment made by the district court at sentencing that "the plea agreement is appropriate and so that is what I'll follow in this case" when it imposed the sentence. Though McClanahan argued for the mitigated grid box sentence and for concurrent sentences on all charges, the district court followed the recommendations of the State by imposing the mid-number and running some of the charges consecutive. He seeks reversal of his sentence based on the district court's misinterpretation of the plea agreement.

McClanahan acknowledges that an appellate court typically cannot review "[a]ny sentence that is within the presumptive sentence for the crime." K.S.A. 2022 Supp. 21-6820(c)(1). So he asks the panel to extend the *Warren/Cisneros* exception—which permits appellate review of presumptive sentences in limited cases when the district court misinterprets its own statutory authority—to the misinterpretation of plea agreements. *State v. Warren*, 297 Kan. 881, Syl. ¶ 1, 304 P.3d 1288 (2013) (appellate court may review a presumptive sentence where the district court refused to consider defendant's request for a downward departure sentence it had authority to impose); *State v. Cisneros*, 42 Kan. App. 2d 376, 379, 212 P.3d 246 (2009) (appellate court may review presumptive sentence where the district court incorrectly expressed at a probation violation hearing that it had no power to reduce the term of the defendant's sentence).

McClanahan argues that the *Warren/Cisneros* exception should be extended to the misinterpretation of plea agreements because plea agreements are increasingly common, and judges often follow their sentencing recommendations, citing several studies in

support. He concedes that district courts are not bound by sentencing agreements, but states that there is an "entrenched expectation that a district court will follow a plea agreement." As such, he claims that appellate courts should afford the same scrutiny it gives to a court's misinterpretation of its statutory authority to a court's alleged misinterpretation of a plea agreement.

But the Kansas Supreme Court has explained that our Legislature's enactment of K.S.A. 21-4721(c)(1) (recodified as K.S.A. 2022 Supp. 21-6820[c][1]) "represented an intention to remove presumptive sentences from appellate review, even when appeals were based on a claim of prejudice, corrupt motive, or an error involving a constitutional right." *Warren*, 297 Kan. at 883 (citing *State v. Huerta*, 291 Kan. 831, 835, 247 P.3d 1043 [2011]) (refusing to review an individual presumptive sentence on the basis that it was unconstitutional). McClanahan's invitation to expand this limited exception that allows for appellate review of presumptive sentences when a district court misinterprets its own statutory authority is unpersuasive. And he makes no argument that the sentencing court misinterpreted its statutory authority here. Because this court lacks jurisdiction to review McClanahan's presumptive sentence, we dismiss this portion of his claim.

Affirmed in part and dismissed in part.