

NOT DESIGNATED FOR PUBLICATION

No. 125,305

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

ROBERT T. JENKINS,
Appellant,

v.

STATE OF KANSAS,
Appellee.

MEMORANDUM OPINION

Appeal from Seward District Court; BRADLEY E. AMBROSIER, judge. Submitted without oral argument. Opinion filed December 8, 2023. Reversed and remanded with directions.

Adam T. Carey, of The Law Offices of A.T. Carey, of Elkhart, for appellant.

Russell Hasenbank, county attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before WARNER, P.J., ATCHESON, J., and MARY E. CHRISTOPHER, S.J.

PER CURIAM: On appeal, Robert Travis Jenkins contends the district court erred in summarily denying his K.S.A. 60-1507 motion for habeas corpus relief as untimely. We agree the district court failed to properly account for the time Jenkins' petition for writ of certiorari in the direct appeal of his criminal conviction was before the United States Supreme Court, and for the Kansas Supreme Court's order suspending various statutes of limitations and filing deadlines, including those contained in K.S.A. 60-1507(f)(1), in response to the COVID-19 pandemic. Correctly considered, those circumstances establish Jenkins timely filed the K.S.A. 60-1507 motion as the State concedes. We

therefore reverse the dismissal and remand to the district court with directions to reinstate the K.S.A. 60-1507 motion for further proceedings.

FACTUAL AND PROCEDURAL HISTORY

After being convicted of aggravated robbery, Jenkins was sentenced to 221 months in prison in September 2016. This court affirmed Jenkins' conviction on direct appeal on May 25, 2018. *State v. Jenkins*, No. 117,026, 2018 WL 2375788, at *1 (Kan. App. 2018) (unpublished opinion). Jenkins filed a petition for review in the Kansas Supreme Court, which was denied on February 28, 2019, with the mandate being filed on March 11, 2019. Jenkins then filed a petition for a writ of certiorari in the United States Supreme Court, which was likewise denied on October 7, 2019. *Jenkins v. Kansas*, 140 S. Ct. 162, 205 L. Ed. 2d 101 (2019).

On November 30, 2021, Jenkins filed the K.S.A. 60-1507 motion at issue in this case, alleging multiple grounds for relief from his convictions. About two weeks later, the district court summarily denied the motion as untimely. The court determined the judgment in Jenkins' direct criminal case became final on March 11, 2019, and, therefore, concluded Jenkins' K.S.A. 60-1507 motion was filed "well outside the timeframe to bring this action." Jenkins timely appealed that ruling.

DISCUSSION

Did the district court err in summarily denying Jenkins' K.S.A. 60-1507 motion as untimely?

Jenkins argues that the district court erred in summarily denying his K.S.A. 60-1507 motion as untimely for two reasons: (1) the district court miscalculated the deadline by which he had to file his motion; and (2) even if his motion was untimely, he

demonstrated the manifest injustice sufficient to warrant an extension of the filing deadline. On appeal, the State concedes Jenkins' motion was timely filed. Because we find Jenkins timely filed his K.S.A. 60-1507 motion and grant relief on that basis, we need not and do not further consider Jenkins' alternative claim that the motion falls within the manifest injustice exception to the one-year filing deadline.

Standard of Review

When addressing a K.S.A. 60-1507 motion, the district court has three options: (1) the court may determine that the motion, files, and case records conclusively show the prisoner is entitled to no relief and deny the motion summarily; (2) the court may determine from the motion, files, and records that a potentially substantial issue exists, in which case a preliminary hearing may be held, and if the court then determines there is no substantial issue, the court may deny the motion; or (3) the court may determine from the motion, files, records, or preliminary hearing that a substantial issue is presented requiring a full hearing. *State v. Adams*, 311 Kan. 569, 577-78, 465 P.3d 176 (2020).

This court's standard of review turns on which of these options the district court used. 311 Kan. at 578. When, as here, the district court summarily denies the K.S.A. 60-1507 motion, this court conducts a de novo review to determine whether the motion, files, and records of the case conclusively establish that the movant is not entitled to any relief. *Noyce v. State*, 310 Kan. 394, 398, 447 P.3d 355 (2019).

Governing Law

A prisoner has one year from when his or her conviction becomes final to file a K.S.A. 60-1507 motion. K.S.A. 2022 Supp. 60-1507(f)(1). This one-year time limitation may be extended by the district court only to prevent manifest injustice. K.S.A. 2022 Supp. 60-1507(f)(2); *State v. Mitchell*, 315 Kan. 156, Syl. ¶ 5, 505 P.3d 739 (2022)

("K.S.A. 60-1507 motions are time-barred if filed more than one year after the case is final unless a movant can establish manifest injustice."); Kansas Supreme Court Rule 183(c)(4) (2023 Kan. S. Ct. R. at 243).

In response to the COVID-19 pandemic, Kansas Supreme Court Administrative Order 2020-PR-016, effective March 18, 2020, suspended "'all statutes of limitations and statutory time standards or deadlines applying to the conduct or processing of judicial proceedings'" until further order. *In re Matter of Bell*, 317 Kan. 334, 335, 529 P.3d 153 (2023). On July 1, 2021, in Kansas Supreme Court Administrative Order 2021-PR-100, effective August 2, 2021, the Kansas Supreme Court resumed the one-year time limit for 60-1507 motions, among other deadlines, effective August 2, 2021, by lifting the suspension of the time limit that had gone into effect in March 2020. As provided in the administrative orders, the time between March 18, 2020 and August 2, 2021, would not count against the one-year time period in K.S.A. 60-1507(f)(1).

Analysis

Jenkins filed a petition for a writ of certiorari in the United States Supreme Court which was denied on October 7, 2019. *Jenkins v. Kansas*, 140 S. Ct. 162 (2019). The United States Supreme Court's denial of Jenkins' petition for writ of certiorari on October 7, 2019, triggered the one-year time limitation in K.S.A. 60-1507(f)(1)(B) to file his 60-1507 motion. As such, the district court erred in treating March 11, 2019, as the triggering date.

The Kansas Supreme Court's Administrative Order 2020-PR-016 in March 2020 suspended the running of that deadline about six-months into Jenkins' one-year period to file his K.S.A. 60-1507 motion. As we have explained, that administrative suspension remained in effect until August 2, 2021, leaving Jenkins approximately six months' time

to file his motion after the suspension was lifted. Jenkins filed his motion on November 30, 2021, which was well within the time he had remaining to do so.

The district court erroneously concluded Jenkins failed to file his K.S.A. 60-1507 motion in time. We therefore reverse the district court's summary denial of Jenkins' K.S.A. 60-1507 motion.

Reversed and remanded with directions to reinstate Jenkins' K.S.A. 60-1507 motion for further proceedings.