NOT DESIGNATED FOR PUBLICATION

No. 125,667

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of S.L.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; GREGORY D. KEITH, judge. Opinion filed September 1, 2023. Affirmed.

Jordan E. Kieffer, of Jordan Kieffer, P.A., of Bel Aire, for appellant.

Julie A. Koon, assistant district attorney, and *Marc Bennett*, district attorney, for appellee.

Before WARNER, P.J., GARDNER and HURST, JJ.

PER CURIAM: S.L. appeals her sentence, arguing the district court exceeded its statutory authority by sentencing her to a term of direct commitment without first finding that she poses a risk of harm to another or damage to property. Finding no error, we affirm.

Factual and Procedural Background

In November 2019, the State charged 15-year-old S.L. with robbery, aggravated robbery, and aggravated battery. S.L. entered no contest pleas to aggravated robbery and aggravated battery in April 2021. The district court accepted S.L.'s plea and found her guilty of both crimes.

Before sentencing, the parties agreed that S.L. was a violent offender II, making her eligible for a term of at least two years of direct commitment in a juvenile facility and six months of aftercare. The State agreed to recommend that S.L. be directly committed for 66 months and attend aftercare for 6 months. S.L. could, however, request an alternative disposition.

At sentencing, S.L. argued that she had improved during her presentencing detainment and did not pose a risk to another. She thus asked that the district court sentence her to a term of supervised probation. But the district court denied this request, noting her extensive criminal history, which began when she committed theft at 12 years old. The district court also found that S.L.'s crimes escalated from misdemeanors to batteries and to aggravated battery and robbery. The district court found the amount stolen also escalated and S.L. exhibited significantly aggressive behavior during the commission of some of her crimes. Based on this, the district court imposed the State's recommended sentence of 66 months in a juvenile facility, with 6 months of aftercare.

On appeal from that sentence, this court found that the district court exceeded its statutory authority under K.S.A. 38-2369(a) because it failed to make a written finding that S.L. "poses a significant risk of harm to another or damage to property." The panel thus vacated S.L.'s sentence and remanded to the district court for a resentencing hearing. *In re S.L.*, 62 Kan. App. 2d 1, 7-9, 505 P.3d 382 (2022).

On remand, the State made the same sentencing recommendation. As support for its claim that S.L. should be directly committed, the State argued that S.L. showed that she was "a danger to others" because she had committed "very violent" crimes.

S.L., however, argued that K.S.A. 38-2361(a)(12) and K.S.A. 38-2369(a) use the present tense in requiring the district court to find that she "poses" a risk of harm. She argued that the statutes thus limit the time frame that a court may consider when

determining a juvenile's risk of harm and preclude consideration of the circumstances that existed when the offender committed their crime. S.L. thus asked the district court to consider only the circumstances presented at the time of her resentencing hearing. At that time, she was 18 years old and had recently graduated from high school. She also noted that when first sentenced, she had a low risk of recidivism as measured by her Youth Level of Service (YLS) score, and that by the time of her resentencing that score had dropped even more. Finally, S.L. contended that it was not legally appropriate to keep her in the juvenile correctional facility.

The district court rejected S.L.'s argument and again imposed the sentence recommended by the State. The court found:

> "Given . . . [S.L.]'s escalating felony behavior . . . from misdemeanor to felonies to violent felonies with violence and . . . not adhering to the court orders, the Court is making the specific finding for that reason that she does pose a significant risk of harm to another or damage to property."

S.L. timely appeals.

Did the District Court Err in Sentencing S.L.?

As in her previous appeal, S.L. argues that the district court exceeded its statutory authority when sentencing her to direct commitment because it failed to make a proper "risk of harm" finding under K.S.A. 38-2369(a). She acknowledges the "risk of harm" verbiage in the district court's resentencing decision, but she claims that by incorporating its findings from the previous sentencing hearing, the district court failed to find that she "poses," rather than "posed" a risk of harm. S.L. thus asserts that the district court ignored K.S.A. 38-2369(a)'s plain and present tense requirement and imposed an illegal sentence. She also suggests that the district court ignored more pertinent evidence shown by her improved YLS score.

Before addressing S.L.'s argument, we must first resolve the State's challenge to our court's jurisdiction to review S.L.'s appeal of her presumptive sentence.

Standard of Review and Basic Legal Principles

This court exercises unlimited review of both jurisdiction and statutory interpretation issues. See *In re T.T.*, 59 Kan. App. 2d 267, 269, 480 P.3d 790 (2020) (jurisdiction), *rev. denied* 313 Kan. 1041 (2021); *State v. Stoll*, 312 Kan. 726, 736, 480 P.3d 158 (2021) (statutory interpretation).

A juvenile has a statutory right to appeal "from an order of adjudication or sentencing, or both." K.S.A. 38-2380(b). But appellate courts have no jurisdiction to review a sentence imposed in a juvenile adjudication for an offense committed after July 1, 1999, that was within the presumptive sentence or was agreed to by the juvenile and the State and approved by the district court. K.S.A. 38-2380(b)(2). When the record discloses such a lack of jurisdiction, this court must dismiss the appeal. See *In re T.T.*, 59 Kan. App. 2d at 272; *In re C.D.A.-C.*, 51 Kan. App. 2d 1007, 1012, 360 P.3d 443 (2015) (finding K.S.A. 2014 Supp. 38-2380 [b][2][A] precluded review of juvenile offender's probation revocation and new sentence, which was within presumptive range). The State contends the record here shows such a lack of jurisdiction.

The Kansas Juvenile Justice Code, K.S.A. 38-2301 et seq., does not define "presumptive sentence," but K.S.A. 38-2369(a) mandates that the district court follow the placements authorized within the statute when the court finds "that the juvenile poses a significant risk of harm to another or damage to property." This court has thus held that when, as here, the district court imposes the relevant disposition outlined in K.S.A. 38-2369(a), it imposes a presumptive sentence. See *In re T.A.*, No. 123,813, 2021 WL 4497404, at *2 (Kan. App. 2021) (unpublished opinion).

Appellate Jurisdiction

In S.L.'s previous appeal, this court found that although S.L. received a presumptive sentence, appellate review was still proper because S.L. claimed that her sentence was not authorized by statute. See *In re S.L.*, 62 Kan. App. 2d at 7-8; see also *State v. Quested*, 302 Kan. 262, 264, 352 P.3d 553 (2015) (finding in the criminal context that despite K.S.A. 2014 Supp. 21-6820[c][2]'s jurisdictional bar, appellate courts have jurisdiction to review a claim that a sentence is illegal because it is not authorized by statute); *In re Z.T.*, No. 122,189, 2020 WL 3393793, at *2 (Kan. App. 2020) (unpublished opinion) (applying *Quested* rule in juvenile offender sentencing context based on identical nature of language used in K.S.A. 2019 Supp. 38-2380[b][2][A] and K.S.A. 2019 Supp. 21-6820[c][1]). S.L. similarly asserts that the district court disregarded the applicable sentencing statutes when imposing her sentence here, so we find appellate review of this claim to be proper.

But S.L. also impliedly claims that her sentence is overly harsh or that the district court's decision is factually unsupported. But S.L. does not challenge the district court's finding that she is a violent offender II. And the district court properly found that she committed a nondrug, severity level 3 felony, placing her in that category. The district court also imposed a sentence within the applicable range for a violent offender II. See K.S.A. 2019 Supp. 21-5420(b)(2), (c)(2); K.S.A. 2019 Supp. 38-2369(a)(1)(B). S.L. thus received a presumptive sentence, which we cannot review for factual or constitutional error. See *In re J.A.*, No. 122,883, 2021 WL 401284, at *3 (Kan. App. 2021) (unpublished opinion) (dismissing claims that sentence was overly harsh and district court's finding that appellant posed risk of harm violated his due process rights). We thus confine our review to whether the district court complied with the applicable sentencing statutes when imposing S.L.'s sentence.

The District Court's Compliance with the Statutory Sentencing Requirements

S.L. claims that her sentence should be vacated because the district court adopted its previous findings about her risk of harm to support its sentencing decision at the resentencing hearing, rather than find she "'*poses* a significant risk of harm to another or damage to property,'" pursuant to K.S.A. 38-2369(a). (Emphasis added.) We find this argument unsupported and unconvincing.

The district court based its previous sentencing findings on S.L.'s criminal history, which began when S.L. committed theft at 12 years old and progressed from misdemeanors to batteries, aggravated battery, and aggravated robbery. The district court also found the value of the amounts stolen and the level of aggression S.L. showed during the commission of these crimes escalated over time. See *In re S.L.*, 62 Kan. App. 2d at 2-3.

When addressing these findings in S.L.'s previous appeal, this court found that the district court made only "vague statements about S.L.'s escalating behavior" at S.L.'s original sentencing hearing which failed to meet K.S.A. 38-2369(a)'s written finding requirement. 62 Kan. App. 2d at 8. The panel did not, however, find the district court's statements violated K.S.A. 38-2369(a) or any other applicable statute and ultimately reversed based on the lack of a written finding. 62 Kan. App. 2d at 9.

S.L. cites no authority showing these findings do not comply with the applicable statutes. When, as here, a statute is plain and unambiguous, an appellate court should not speculate about the legislative intent behind that clear language, and it should avoid reading something into the statute that is not readily found in its words. *State v. Ayers*, 309 Kan. 162, 164, 432 P.3d 663 (2019). We show that restraint here.

Although K.S.A. 38-2369(a) requires a written finding that a juvenile "poses" a risk of harm or damage, it does not prescribe specific criteria for the type of finding that the district court must make when announcing its ruling. And regardless of the statute's use of present tense language, the applicable provisions do not preclude the district court from considering a juvenile's criminal history. See K.S.A. 38-2361(a)(12); K.S.A. 38-2369(a). The State correctly asserts that such an interpretation is unreasonable.

And at the resentencing hearing, after incorporating its previous findings, the district court made additional findings, including that S.L. had disregarded previous court orders:

> "My review of the appellate case is it was reviewed and that the Court, myself, did not make the specific finding in writing that the juvenile offender poses a significant risk of harm to another or damage to property.
>
> "The Court had gone through [S.L.]'s history of escalating felonies, violence in those crimes, . . . being in violation of court orders, people she was supposed to be with or not be with.
>
> "The Court . . . is going to adopt all of those findings that it made in the sentencing on May 5th, and for the reasons I gave at that time and were spelled out in the transcript and also in the appellate court. Given that [S.L.]'s escalating felony behavior . . . from misdemeanor to felonies to violent felonies with violence and absolute . . . not adhering to the court orders, the Court is making the specific finding for that reason that she does pose a significant risk of harm to another or damage to property."

True, S.L. did present the evidence about her YLS score and other information that she claims the district court disregarded before resentencing her. But we must presume that the district court considered that evidence in making its final decision, and we cannot reweigh evidence. And because S.L. received a presumptive sentence, we cannot review the district court's sentencing decision for the type of factual or constitutional error that S.L. may have tried to include in her statutory claim. Cf. *State v. Johnson*, 317 Kan. 458, at 465-66, 531 P.3d 1208 (2023) (considering whether appellant's purportedly statutorily

based claim raised was based on applicable statute or some other rule, e.g., constitutional rule, in determining its appellate jurisdiction to review allegedly illegal sentence).

Because S.L. fails to establish that the district court exceeded its statutory authority when it sentenced her to a term of direct commitment and aftercare, we affirm.

Affirmed.