

NOT DESIGNATED FOR PUBLICATION

No. 125,870

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

LEROY WILLIAM BOWERS,
Appellant,

v.

BARTON COUNTY SHERIFF BRIAN JOSEPH BELLENDIR,
Appellee.

MEMORANDUM OPINION

Appeal from Barton District Court; STEVEN E. JOHNSON, judge. Opinion filed August 4, 2023.
Affirmed.

Bradley T. Steen, of Law Office of B. Truman Steen, LLC, of Ellsworth, for appellant.

Allen G. Glendenning, of Watkins Calcara, Chtd., of Great Bend, for appellee.

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

PER CURIAM: Leroy William Bowers appeals the district court's dismissal of his K.S.A. 60-1501 habeas corpus petition as moot. Bowers claims he was subject to threats, harassment, and physical violence by inmates and staff while incarcerated at the Barton County Jail, and his petition requests his immediate "release from custody" from that facility. The district court dismissed the petition as moot because Bowers is no longer in custody in the Barton County Jail. We agree with the district court that Bowers' habeas corpus petition is moot, and he has failed to show that any exceptions to the mootness doctrine apply in this situation. Thus, we affirm the district court's judgment.

FACTS

In January 2021, Bowers was booked into the Barton County Jail to await trial for various charges that are not relevant to this appeal. On March 12, 2021, Bowers filed a K.S.A. 60-1501 habeas corpus petition against Barton County Sheriff Brian Joseph Bellendir (respondent) challenging the conditions of his confinement. Bowers alleged in the petition that jail employees failed to stop other inmates from harassing, threatening, and assaulting him, and also that jail employees sometimes engaged in or encouraged the threats and harassment. Bowers' petition asked the respondent "to dismiss all charges with prejudice." The petition also sought Bowers' immediate "release from custody" from the Barton County Jail as his only other request for relief. The district court summarily dismissed Bowers' petition, finding that dismissal of the charges "cannot be obtained through habeas corpus" and "the facts do not justify his pretrial detention release."

On appeal, this court reversed the summary dismissal and remanded for further proceedings because the district court failed to acknowledge other theories under which Bowers may have been entitled to relief. *Bowers v. Bellendir*, No. 124,020, 2022 WL 259187, at *3 (Kan. App. 2022) (unpublished opinion). More specifically, this court found that the district court overlooked Bowers' potential claim against the respondent for "deliberate indifference" to his well-being. 2022 WL 259187, at *5-6. This court issued its mandate on March 17, 2022.

The record reflects that before this court issued its mandate, Bowers had been transferred to the Rice County Jail on June 4, 2021, and was later released on July 9, 2021. Bowers was then arrested on October 14, 2021, for a probation violation and was again transferred from the Barton County Jail to the Rice County Jail on October 25, 2021. Bowers was released from the Rice County Jail into the custody of the Kansas Department of Corrections (KDOC) on March 7, 2022. The respondent's brief asserts that Bowers "is no longer in anyone's custody" but provides no record citation to support that

claim. Bowers does not address his current custody status in his brief, but he acknowledges that he is not in the respondent's custody.

On remand, the district court issued a writ requiring the respondent to answer Bowers' petition. In its answer, the respondent alleged that the petition was moot because Bowers was no longer in the custody of the Barton County Jail. Both parties briefed the mootness issue. On April 28, 2022, the district court again dismissed Bowers' habeas corpus petition, this time on the ground that it was moot because Bowers was no longer in the respondent's custody. Bowers timely appealed the district court's judgment.

ANALYSIS

Bowers sole claim on appeal is that the district court erred in dismissing his habeas corpus petition as moot. As a general rule, Kansas courts do not decide moot questions or render advisory opinions. *State v. Roat*, 311 Kan. 581, 590, 466 P.3d 439 (2020). "A case is moot when a court determines it is clearly and convincingly shown that the actual controversy has ended, that the only judgment that could be entered would be ineffectual for any purpose, and that it would not have an impact on any of the parties' rights." 311 Kan. 581, Syl. ¶ 1. Because mootness is a doctrine of court policy, which courts developed through precedent, appellate review of the issue is unlimited. 311 Kan. at 590.

Bowers first claims that his case is not moot because effective relief is available to him. The respondent asserts that Bowers' transfer to KDOC mooted the issue because the only relief he sought in his petition was his release from custody.

The respondent cites to *Jamerson v. Heimgartner*, 304 Kan. 678, 686, 372 P.3d 1236 (2016), where the Kansas Supreme Court found that release from administrative segregation, but continued confinement in the same facility, was sufficient to render a K.S.A. 60-1501 petition moot where the petitioner only challenged his confinement in

administrative segregation. Indeed, Bowers acknowledges in his brief that the holding in *Jamerson* appears contrary to his position. See also *Kelly v. Cline*, No. 124,210, 2022 WL 2112625, at *1 (Kan. App. 2022) (unpublished opinion) (similarly finding that release from administrative segregation, but continued confinement in the same facility, mooted claims of improper confinement as to the administrative segregation).

In *Astorga v. Leavenworth County Sheriff*, No. 124,944, 2022 WL 16843472, at *5 (Kan. App. 2022) (unpublished opinion), this court recently considered circumstances similar to Bowers' in greater detail. There, Astorga challenged in a habeas corpus proceeding the conditions of his confinement at the Leavenworth County Jail. The district court dismissed Astorga's original petition, but this court remanded the case to the district court for further proceedings. On remand, the district court dismissed the petition on the merits, and Astorga again appealed. During that second appeal, Astorga was transferred from the Leavenworth County Jail into KDOC custody. The question on appeal became whether Astorga's transfer into KDOC custody rendered his claims moot. After a lengthy discussion, this court found that Astorga's claims were moot because it could provide no relief where Astorga's claims related solely to a particular place of confinement where he was no longer incarcerated. This court concluded that "[a]n opinion concerning Astorga's former incarceration conditions in Leavenworth would have no effect on the legal relationship between Astorga and Leavenworth, or the KDOC." 2022 WL 16843472, at *3.

Jamerson, *Cline*, and *Astorga* stand for the general proposition that an inmate's habeas corpus petition challenging the conditions of confinement at a facility becomes moot when the inmate is no longer subject to the form of confinement complained about or is released from custody at the facility complained about in the petition. Bowers tries to circumvent the holding in *Jamerson* by arguing that other relief is available to him even though he has been released from the custody of the Barton County Jail. Bowers points out that under K.S.A. 2022 Supp. 60-1505(d), a court may make "such other orders

as justice and equity . . . may require." Bowers also cites K.S.A. 60-1506(b) authorizing a court to issue warrants and K.S.A. 22-2301(2) allowing a district judge, in extreme cases, to order the county attorney to institute criminal proceedings against any person. Bowers asserts in his brief, without any elaboration, that "[u]pon harmonizing the three legislative provisions of K.S.A. 60-1505(d), K.S.A. 22-2301(2), and K.S.A. 60-1506(b): relief in this matter could have included a judicial referral for criminal charges of staff who ignored inmate violence against Petitioner."

We agree with the district court that Bowers habeas corpus petition challenging the conditions of his confinement at the Barton County Jail is moot because Bowers is no longer in the respondent's custody. The nature of Bowers' complaints—threats, harassment, and physical violence by both the other inmates and the jail staff—have been fully extinguished by Bowers' removal from the respondent's custody. Bowers also does not allege, and the record does not show, any lingering or ongoing effects sustained by Bowers from his allegations of misconduct.

The district court was correct when it originally found that dismissal of the charges against Bowers was not an appropriate remedy in a habeas corpus proceeding. Bowers' only other requested relief in his petition was for his immediate "release from custody" from the Barton County Jail. That relief has already been granted, so the only judgment that could be rendered for Bowers would be ineffectual for any purpose. We disagree with Bowers' assertion on appeal that "judicial referral for criminal charges of staff who ignored inmate violence" is a proper judgment that could be granted by the district court in a habeas corpus proceeding under K.S.A. 2022 Supp. 60-1505(d). And even if such a judgment were proper, Bowers did not request this relief in his petition.

Bowers next argues that even if his case is now moot, mootness is a prudential doctrine which allows exceptions, such as for matters which "raise issues that are capable of repetition and present concerns of public importance." *Roat*, 311 Kan. at 590. Bowers asserts that when his case was dismissed, he was still under a transport order where the respondent's office was to transport him from KDOC custody to a single hearing in a pending criminal case. To support his assertion, Bowers cites to his own reply brief to the district court where he similarly alleged to be under a transport order that would preclude a finding of mootness. Bowers cites no other document or fact in the record on appeal that verifies this assertion. A citation to allegations raised in district court will not suffice to support an argument on appeal. See *Friedman v. Kansas State Bd. of Healing Arts*, 296 Kan. 636, 644, 294 P.3d 287 (2013) (deeming an argument waived and abandoned where a record citation was to an allegation made in district court).

Bowers develops no other argument to support a claim that the complaints in his petition are capable of repetition, either with himself or with another inmate. Likewise, in one sentence in his brief, he asserts that "[t]he appropriateness of jailors' actions is an issue of public importance." "[P]ublic importance means something more than that the individual members of the public are interested in the decision of the appeal from motives of curiosity or because it may bear upon their individual rights or serve as a guide for their future conduct as individuals." *State v. Hilton*, 295 Kan. 845, Syl. ¶ 5, 286 P.3d 871 (2012). Bowers does not expand upon his claim that the "public importance" exception prevents his case from being moot. A point raised incidentally in a brief and not argued is waived or abandoned. *State v. Meggerson*, 312 Kan. 238, 246, 474 P.3d 761 (2020).

In sum, Bowers' complaints about his confinement at the Barton County Jail are moot because he is no longer in the respondent's custody. The allegations of misconduct in Bowers' habeas corpus petition are specific to Bowers and his circumstances. Bowers' petition requested his immediate "release from custody" from the Barton County Jail and that relief has already been granted. Bowers has failed to show that the recognized

exceptions to the mootness doctrine apply to his case. Thus, we conclude the district court did not err in dismissing Bowers' habeas corpus petition as moot.

Affirmed.