NOT DESIGNATED FOR PUBLICATION

No. 125,922

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellant,

v.

DAVID L. WOODWARD,
Appellee.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; CHRISTOPHER M. MAGANA, judge. Submitted without oral argument. Opinion filed December 22, 2023. Affirmed.

Sam S. Kepfield, of Hutchinson, for appellant, and *David L. Woodward*, appellant pro se.

Juile A. Koon, deputy district attorney, *Marc Bennett*, district attorney, and *Kris W. Kobach*, for appellee.

Before BRUNS, P.J., COBLE and PICKERING, JJ.

PER CURIAM: In 1991, David Woodward pled guilty to felony murder, kidnapping, two counts of sexual exploitation of a child, rape, and indecent liberties with a child. Approximately 20 years later, Woodward filed a "Petition for DNA Testing" which was summarily denied by the district court. However, a panel of this court reversed on appeal and remanded the motion to the district court for further consideration. On remand, the parties agreed to DNA testing but the results were inconclusive. After receiving the DNA results, Woodward filed a motion to vacate his felony-murder

conviction, which was denied by the district court. For the reasons set forth in this opinion, we affirm the district court's denial of the motion.

FACTS

On September 5, 1991, Woodward pled guilty to the felony murder of a 5-year-old child, A.S. In addition, he pled guilty to kidnapping, two counts of sexual exploitation of a child, rape, and indecent liberties with a child in connection with the sexual molestation of a different child. See *State v. Woodward*, No. 68,957 (Kan. 1994), unpublished opinion filed January 21, 1994. In the more than 30 years since his convictions, Woodward has filed numerous motions and appeals. See *State v. Woodward*, 288 Kan. 297, 202 P.3d 15 (2009) (affirming denial of motion to withdraw guilty plea); *State v. Woodward*, No. 103,555, 2011 WL 1002957 (Kan. 2011) (unpublished opinion) (affirming denial of motion to withdraw guilty plea and motion for DNA testing); *Woodward v. State*, No. 115,896, 2017 WL 3113030 (Kan. App. 2017) (unpublished opinion) (affirming denial of K.S.A. 60-1507 motion); *Woodward v. State*, No. 77,762, 1999 WL 35814115 (Kan. App. 1999) (unpublished opinion) (affirming denial of K.S.A. 60-1507 motion).

The current appeal has its roots in a "Petition for DNA Testing" filed by Woodward in 2011. See *State v. Woodward*, No. 109,983, 2014 WL 4080160, at *2 (Kan. App. 2014) (unpublished opinion). In his petition, Woodward requested DNA testing of any material related to the criminal investigation resulting in his rape and murder convictions. In the alternative, if the material had previously been tested, he requested that it be tested with newer techniques available after he was convicted. Although the district court summarily denied the request for DNA testing, a panel of this court reversed and remanded the motion to the district court for further consideration. 2014 WL 4080160, at *2-5.

We pause to note that in July 2014—while Woodward's first appeal concerning this motion was pending—he filed a pro se "Motion to Void Judgment" claiming that he had obtained a previously unavailable lab report prepared by the Kansas Bureau of Investigation that allegedly contained evidence favorable to him. The district court summarily denied that motion and a subsequent request for reconsideration. Because the record does not reflect that Woodward appealed the summary denial of that motion, it is not properly before this court for consideration, nor is it material to the limited issue presented in this appeal.

On remand, the parties eventually agreed to the DNA testing as requested. As a result, the district court ordered the Sedgwick County Regional Forensic Science Center Laboratory to conduct the testing. In response to the district court's order, the laboratory performed DNA testing on 13 exhibits related to the killing of the 5-year-old child upon which the felony-murder conviction was based. The report from these tests indicated that DNA profiles from 8 of the 13 exhibits were partial in nature and of no comparative value. The report further indicated that no DNA profiles were detected on the remaining five exhibits.

Upon receiving the results of the DNA testing, Woodward's appointed counsel filed another motion to vacate his felony-murder conviction. In his motion, Woodward argued that the DNA results were favorable to him. In the alternative, he argued that even if the results were inconclusive, the district court should exercise its discretion to determine whether there is a substantial question of his innocence. In its response, the State argued that Woodward was not entitled to relief on his motion to vacate the felony-murder conviction because the DNA results were not favorable to him and did not raise a substantial question regarding his innocence.

On December 30, 2021, the district court held a hearing at which it denied Woodward's motion to vacate the felony-murder conviction. The district court offered a

detailed explanation of its decision on the record. Specifically, the district court determined—among other things—that the DNA test results were inconclusive and that there was not a substantial question of Woodward's innocence. The district court subsequently issued a written ruling in which it again set forth its reasons for denying the motion to vacate the felony-murder conviction.

Thereafter, Woodward timely appealed.

ANALYSIS

The sole issue presented on appeal is whether the district court abused its discretion in declining to grant a hearing to determine whether there is a substantial question that Woodward is innocent of the felony-murder charge to which he pled guilty in 1991. K.S.A. 21-2512 allows individuals serving a sentence for murder to seek DNA testing under certain circumstances. What happens after DNA testing is performed depends on the results of the testing. *State v. Edwards*, 311 Kan. 879, 887, 467 P.3d 484 (2020).

K.S.A. 2022 Supp. 21-2512(f)(3) provides that "[i]f the results of DNA testing conducted under this section are inconclusive, the court *may* order a hearing to determine whether there is a substantial question of innocence." (Emphasis added.) In other words, "[w]here the DNA testing results are inconclusive, the district court is granted discretion whether to order a hearing . . . to determine whether there is a substantial question of the defendant's innocence." *Haddock v. State*, 282 Kan. 475, Syl. ¶ 10, 146 P.3d 187 (2006); see also *State v. LaPointe*, 305 Kan. 938, 946, 390 P.3d 7 (2017); *Goldsmith v. State*, 292 Kan. 398, 402, 255 P.3d 14 (2011).

On appeal, Woodward does not challenge the district court's determination that the results of the DNA testing were inconclusive. Consequently, we review the district

court's decision under an abuse of discretion standard. A district court abuses its discretion only if its decision is (1) arbitrary, fanciful, or unreasonable; (2) based on an error of law; or (3) based on an error of fact. *State v. Bilbrey*, 317 Kan. 57, Syl. ¶ 3, 523 P.3d 1078 (2023). As the party asserting that the district court abused its discretion in this appeal, Woodward bears the burden of showing that such an abuse occurred. See *State v. Keys*, 315 Kan. 690, 708, 510 P.3d 706 (2022).

Woodward argues the district court abused its discretion when it found that the inconclusive results did not create a substantial question of his innocence or allow him to carry his burden to establish that he was entitled to relief. Moreover, Woodward asserts that no preliminary hearing was held in the underlying criminal case. Accordingly, he argues the district court did not have a sufficient factual basis upon which to make a legal conclusion regarding whether there is a substantial question of his innocence.

Notwithstanding Woodward's claim to the contrary, a review of the record reveals that the district court did, in fact, conduct a preliminary hearing on June 27, 1991. At the preliminary hearing, the district court heard evidence presented by the State in support of the felony-murder charge. This evidence included the following testimony from chief investigating officer:

> "I asked [Woodward] what he did on August the 20th of '86. He said that he had gotten up in—up the morning of August the 20th of '86 and had taken his wife to work. He said that he was going to work as well but, after he had taken his wife to work, he was feeling ill and he decided to come home. Mr. Woodward said he came home, he laid down after changing clothes and took a nap. He said that he woke up around noon. He was feeling somewhat better. That he got up and fixed him some soup in the kitchen. He said that, shortly after that, that he heard someone knocking on the door. He went to the door and it was [A.S.] He said that [A.S.] had rode her bike up; that her bike was parked on the patio outside of the kitchen door. He said that he let [A.S.] in the house. She asked if she could come in and play.

"Mr. Woodward stated to me that at that time they had a pinball machine or a pinball game that she wanted to play. He said that [A.S.] played the pinball game for a little bit and then she wanted a piggyback ride. Mr. Woodward said that he gave her a piggyback ride around the house for a little while. He then said that he got his handcuffs, the children liked to play with his handcuffs. He said he got his handcuffs and he handcuffed [A.S.] He said that they were in the living room and were on the floor wrestling around and that Mr. Woodward put his arm around [A.S.]'s neck standing somewhat behind her and that he put pressure on her neck and he held her too long. He said that she—at a later point in the conversation, he advised me that [A.S.] was on the floor when this occurred and that they were rolling around on the floor and that [A.S.] was still handcuffed when he had his arm around her neck. He said that he held her too long on the floor, that she wasn't breathing so he shook her and tried to get her to breathe. He said that [A.S.] would not breathe, would not come back to, so he put the bicycle that [A.S.] was riding in his bathroom which is upstairs.

"Mr. Woodward stated to me that he then picked [A.S.] up and took her out and placed her in the back seat of his yellow—I'm sorry—of his Chrysler vehicle. He said he then drove the Chrysler vehicle onto 54 Highway. He drove east on 54 Highway to a gravel road which goes to the north of 54 and that there's a building, a Tupperware building at that location. Mr. Woodward said he turned to his left and drove up the road a ways until he came to the location where he got out of his vehicle, took [A.S.] out of his back seat, and placed her into the ditch under the trees. Prior to doing that, he advised me that he had taken the cuffs off of her before he loaded her into the back seat of his vehicle. Mr. Woodward stated that he then left that location. As he was leaving, there was a pickup truck which was approaching from the south. Mr. Woodward was driving north and the pickup truck was driving north. He said that he drove north to a blacktop which he knows as 21st Street. He then said he drove east to Maize Road and turned south. He said he drove south to 54 Highway and drove over and picked his children up at the babysitter's.

"Mr. Woodward stated that he then took the children home. He sent the children out to play. At that time, his children were five and eleven. He said that he then disassembled the bike, which he could not remember what he had taken off of the bike. He said he used a pair of vice grip pliers to disassemble the bike. He then loaded the bike

> into the trunk of his vehicle and, at that time, it was approximately four o'clock. I discussed the time with him that he had killed [A.S.], and he said it was approximately 1:30 in the afternoon. He said he had dumped [A.S.]'s body at that location at approximately two o'clock. After he had arrived home and disassembled the bike, it was approximately four o'clock when he dumped off the bike. He said he again drove his vehicle onto Kellogg which is 54 Highway. He drove east to a gravel road by the Tupperware building. He turned north and drove up the road a ways, he stopped and placed the bicycle and its parts out into a field."

After hearing this testimony, the district court determined there was probable cause to believe that the crime of felony murder had been committed and that Woodward had committed the crime. As such, the district court bound him over for trial on the felony-murder charge. Later, on September 5, 1991, Woodward pled guilty to various charges including felony murder.

A review of the record also reveals that when Woodward entered his guilty plea, he signed an acknowledgment of rights and entry of plea form in which he expressly acknowledged that "[a] plea of guilty is an admission of guilt to the crimes charged . . . ." Moreover, the district court found "that the [guilty] plea was voluntarily made with an understanding of the nature of the charge and the consequences of the plea, and that *there is a factual basis for the plea* . . . ." (Emphasis added.) As such, we reject Woodward's argument that there is not a sufficient record to establish his guilt on the felony-murder charge. -

To be sure, "[a] plea of guilty alone does not disqualify a defendant from seeking DNA testing pursuant to K.S.A. 2004 Supp. 21-2512." *State v. Smith*, 34 Kan. App. 2d 368, Syl. ¶ 5, 119 P.3d 679 (2005). But we should not lose sight of the fact that Kansas law establishes that a guilty plea "is admission of the truth of the charge[s] and every material fact alleged therein." K.S.A. 22-3209(1). Here, based on the testimony presented at the preliminary hearing combined with Woodward's guilty plea to the felony-murder

charge, it was not unreasonable for the district court to conclude that the inconclusive DNA test results were insufficient to warrant an evidentiary hearing to determine whether there was a substantial question of his innocence.

Finally, it is important to recognize that the DNA testing in this case did not provide the district court with any new information that it did not already have in the record. As the State correctly observes, Woodward "was in no better position than he was before the DNA testing." Given the evidence produced at the preliminary hearing, Woodward's guilty plea, and the inconclusive DNA test results, we conclude that the district court did not abuse its discretion in declining to grant Woodward a hearing to determine whether there was a substantial question of his innocence because—under these circumstances—such a hearing would have been futile.

We also note that Woodward filed a pro se supplemental brief asking this court to order new DNA testing. But K.S.A. 2022 Supp. 21-2512(a) requires convicted offenders to "petition the court that entered the judgment" if they seek postconviction DNA testing. Consequently, we find that this issue is not properly before us for consideration.

We therefore conclude that the district court's denial of Woodward's motion to vacate his felony-murder conviction should be affirmed.

Affirmed.