

NOT DESIGNATED FOR PUBLICATION

No. 126,110

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

TONY EARL EPPS JR.,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court, CHRISTOPHER M. MAGANA, judge. Opinion filed December 8, 2023. Affirmed.

Submitted by the parties for summary disposition pursuant to K.S.A. 2022 Supp. 21-6820(g) and (h).

Before CLINE, P.J., WARNER and PICKERING, JJ.

PER CURIAM: Tony Earl Epps Jr. appeals the district court's imposition of his sentence. We granted his motion for summary disposition under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48.) The State contends that Epps failed to show no reasonable person would agree with the district court's sentence and asks this court to affirm. Finding no abuse of discretion by the district court, we affirm.

Epps pled guilty to domestic battery—his third or subsequent domestic battery within five years—in violation of K.S.A. 2022 Supp. 21-5414(a)(2), a nongrid person

felony. The district court released Epps on bond. While on bond awaiting his sentence, Epps twice violated the terms of his bond.

At the sentencing hearing held December 7, 2022, Epps requested work release so he could provide for his family. The district court explained that the court would not authorize work release on the minimum statutory sentence of 90 days in jail because this was Epps' "third case in such a short time with the same victim[.]" If, however, Epps wished to have work release, the sentence would be longer—likely six months. After hearing the options that the court was considering, Epps advised the court that he would rather the court impose a longer sentence, which would allow him work release to support his family. The district court then sentenced Epps to 2 days in jail, which he had served, followed by 178 days of work release, for a total of 180 days. Upon release, Epps was to remain on probation for 12 months with an underlying jail sentence of 12 months.

Epps timely appealed.

Epps argues the district court abused its discretion by imposing a 6-month—or 180-day—jail sentence followed by 12 months' probation. Epps contends no reasonable person would agree with the district court's decision to sentence him beyond the 90-day minimum statutory sentence provided in K.S.A. 2022 Supp. 21-5414(c)(1)(C). Epps suggests the district court's decision to impose a sentence beyond the 90-day minimum statutory sentence was unreasonable because of the circumstances of his arrest while on bond, his desire to support his family, his acceptance of responsibility by accepting a plea agreement, and the State's prior support of the minimum sentence.

"A criminal sentence that is within statutory limits will not be disturbed on appeal absent a showing of abuse of discretion or vindictiveness on the part of the sentencing court." *State v. Brown*, 309 Kan. 369, 375, 435 P.3d 546 (2019). A district court abuses its discretion if its decision is based on an error of fact or law or is arbitrary, fanciful, or

unreasonable. *State v. Levy*, 313 Kan. 232, 237, 485 P.3d 605 (2021). Epps bears the burden to establish such abuse of discretion. See *State v. Crosby*, 312 Kan. 630, 635, 479 P.3d 167 (2021).

K.S.A. 2022 Supp. 21-5414(c)(1)(C) states in relevant part:

"[T]he offender shall be sentenced to not less than 90 days nor more than one year's imprisonment The offender convicted shall not be eligible for release on probation . . . until the offender has served at least 90 days' imprisonment. . . . The 90 days' imprisonment mandated by this paragraph may be served in a work release program only after such offender has served 48 consecutive hours imprisonment."

K.S.A. 2022 Supp. 21-5414(c)(1)(C) grants courts discretion to impose a sentence up to one year. Here, the district court sentenced Epps to serve 180 days, 178 of which were served on work release after Epps had served 48 consecutive hours in jail. Epps served over 90 days and was therefore eligible for release on probation. And the district court imposed 12 months' probation after Epps served a combined 180 days in jail and on work release. The district court imposed an underlying jail sentence of 12 months—the maximum sentence permitted by statute.

As noted above, the district court handed down this sentence after discussing the different sentencing options with Epps. In that discussion, Epps urged the court to impose a work release sentence even if that sentence would be longer than the 90-day sentence he had initially requested. This fact weighs against Epps' argument that the court's ruling was inherently unreasonable. Additionally, because this was Epps third case with the same victim, the court did not find the minimum sentence of 90 days was appropriate. That said, Epps' sentence was within statutory limits and certainly was reasonable. We find the district court did not abuse its discretion.

Affirmed.