NOT DESIGNATED FOR PUBLICATION

Nos. 126,217
126,218

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

JERRID WAYNE LOGAN,
Appellant,

v.

STATE OF KANSAS,
Appellee.

MEMORANDUM OPINION

Appeal from Saline District Court; PAUL J. HICKMAN, judge. Submitted without oral argument. Opinion filed June 7, 2024. Affirmed.

Kristen B. Patty, of Wichita, for appellant.

Steven J. Obermeier, assistant solicitor general, and *Kris W. Kobach*, attorney general, for appellee.

Before COBLE, P.J., GREEN, J., and TIMOTHY G. LAHEY, S.J.

PER CURIAM: Jerrid Wayne Logan pleaded no contest to one count each of aggravated criminal sodomy, kidnapping, attempted rape, robbery, and aggravated assault. Logan filed two K.S.A. 60-1507 motions after this court affirmed his convictions on appeal. The district court summarily denied both K.S.A. 60-1507 motions. Logan appeals the district court's summary denials and claims that the district court erred by failing to hold an evidentiary hearing and that the district court did not make findings of fact and conclusions of law on his claim of ineffective assistance of appellate counsel

under Supreme Court Rule 183(j) (2024 Kan. S. Ct. R. at 242). Logan failed to establish that his appellate counsel's performance fell below an objective standard of reasonableness and that the result of the proceeding would have changed but for his appellate counsel's performance. Thus, Logan has failed to meet his burden to show that he was entitled to an evidentiary hearing. So, we affirm the district court's summary denial of Logan's first K.S.A. 60-1507 motion.

In Logan's second K.S.A. 60-1507 motion, the district court summarily denied this motion as untimely and successive because Logan had failed show any exceptional circumstances and manifest injustice in support of his second K.S.A. 60-1507 motion. We note that Logan filed his second K.S.A. 60-1507 motion nearly two years after he filed his first K.S.A. 60-1507 motion. And we conclude that he has failed to show any manifest injustice in support of his second K.S.A. 60-1507 motion. We also conclude that Logan has failed to identify any exceptional circumstances to justify the filing of a successive motion. So, we affirm the district court's ruling that Logan's second K.S.A. 60-1507 motion was untimely and successive.

FACTS

The relevant facts underlying Logan's convictions are set forth in this court's previous opinion in *State v. Logan*, No. 116,837, 2018 WL 671909 (Kan. App. 2018) (unpublished opinion).

> "On July 7, 2015, the State charged Logan with the following: (1) one count of aggravated kidnapping, a severity level 1 person felony in violation of K.S.A. 2015 Supp. 21-5408(b); (2) one count of rape, a severity level 1 person felony in violation of K.S.A. 2015 Supp. 21-5503(a)(1)(A); (3) two counts of aggravated criminal sodomy, each severity level 1 person felonies in violation of K.S.A. 2015 Supp. 21-5504(b)(3)(A); (4) one count of kidnapping, a severity level 3 person felony in violation of K.S.A. 2015 Supp. 21-5408(a)(2); (5) two counts of attempted rape, each severity level 3 person

felonies in violation of K.S.A. 2015 Supp. 21-5503(a)(1)(A) and K.S.A. 2015 Supp. 21-5301; (6) one count of aggravated robbery, a severity level 3 person felony in violation of K.S.A. 2015 Supp. 21-5420(b); (7) one count of aggravated sexual battery, a severity level 5 person felony in violation of K.S.A. 2015 Supp. 21-5505(b)(1); (8) one count of aggravated burglary, a severity level 5 person felony in violation of K.S.A. 2015 Supp. 21-5807(b); (9) one count of aggravated battery, a severity level 7 person felony in violation of K.S.A. 2015 Supp. 21-5413(b); (10) two counts of aggravated assault, each severity level 7 person felonies in violation of K.S.A. 2015 Supp. 21-5412(b)(1); and (11) one count of unlawful possession of a controlled substance, a severity level 5 drug felony in violation of K.S.A. 2015 Supp. 21-5706(a) and(c)(1). Logan's charges stemmed from his alleged attacks on two women—J.C. and R.N.—in the early morning hours on July 3, 2015.

"Eventually, the State severed the preceding charges into two cases. The State charged all the crimes stemming from the alleged attacks on J.C. and R.N. in Saline County criminal case No. 15 CR 0629. Meanwhile, the State charged Logan with possession of a controlled substance based on methamphetamine found on him when he was arrested in Saline County criminal case No. 15 CR 1148. Logan challenged the State's decision to sever the charges. He filed a motion for joinder. In his motion, Logan asserted that the 'State [was] clearly severing the possession count so that the two cases will score against each for criminal purposes and potentially allow for a much harsher sentence.' Nevertheless, Logan later withdrew his motion for joinder when he accepted a plea agreement with the State.

"Under the terms of his written plea agreement, Logan would plead either guilty or no contest to the following crimes: one count each of aggravated criminal sodomy, kidnapping, attempted rape, robbery, and aggravated assault. The State would recommend to the trial court that he be sentenced to the aggravated grid box sentence for each of his convictions and that he serve consecutive sentences for his aggravated criminal sodomy, kidnapping, and robbery convictions. Additionally, Logan would be free to argue for any lower sentence—which the State would oppose. Logan also acknowledged in the written plea agreement that his attorney, Jeffery S. Adam, had provided adequate representation, including a thorough discussion of the terms of the plea agreement and possible defenses he had if he went to trial.

"On February 23, 2016, at Logan's plea hearing, Logan made the following statements during the plea colloquy: (1) he had reviewed the charges against him with

Adam; (2) he had discussed the State's evidence against him with Adam; (3) he had discussed possible trial defenses with Adam; (4) he had reviewed the sentencing guidelines and his potential sentencing outcomes with Adam; (5) he had been satisfied with Adam's representation; (6) he had not been forced or coerced by anyone to accept the plea agreement; (7) he had freely, knowingly, voluntarily, and intelligently entered into the plea agreement; (8) he had sufficient time to review his case; and (9) he had no questions for anyone, including the State's attorney. Moreover, he felt comfortable moving forward by entering his pleas. After the plea colloquy, the trial court accepted Logan's no contest pleas to each count of aggravated criminal sodomy, kidnapping, attempted rape, robbery, and aggravated assault.

"On March 16, 2016, before sentencing, Logan moved pro se to withdraw his pleas. In this motion, Logan made three arguments why he should be allowed to withdraw his pleas. First, he asserted that he had tried to fire Adam 'from the time he was appointed' because Adam was biased against him because of the nature of the 'pending allegations against [him].' Logan also asserted that Adam would 'not listen to anything [he] had to tell him and only told [him] what [he] was guilty of.' Second, he alleged:

> "'I was threaten[ed] and coerced into taking this deal. I was told if I didn't take said deal that the courts were going [to] run what all my allegations consecutive even this was one case with all pending charges under one case, then they dropped the possession to run all other charges consecutive.'

"Third, Logan seemingly asserted that Adam gave him errant legal advice regarding a potential trial defense." 2018 WL 671909, at *1-2.

The district court denied Logan's motion to withdraw plea. Following the plea agreement, the district court found Logan guilty of one count each of aggravated criminal sodomy, kidnapping, attempted rape, robbery, and aggravated assault. The district court sentenced Logan to a controlling term of 372 months in prison.

Logan timely appealed the sentence, and this court affirmed the district court's decision and vacated the district court's assessment of the Board of Indigents' Defense Services attorney fee. 2018 WL 671909, at *10.

On January 23, 2019, Logan filed a timely K.S.A. 60-1507 motion. The district court summarily denied the motion, finding that the motion, files, and records of the case conclusively showed that Logan was not entitled to relief. Logan timely appealed that decision.

On September 27, 2021, Logan filed a second K.S.A. 60-1507 motion. The district court summarily denied the second K.S.A. 60-1507 motion, finding that the motion, files, and records of the case conclusively showed that Logan was not entitled to relief. Logan timely appealed that decision also.

This court granted Logan's motion to consolidate those appeals.

ANALYSIS

Did the district court err in summarily denying Logan's K.S.A. 60-1507 motions without granting an evidentiary hearing?

Logan argues on appeal that the district court erred by summarily denying his K.S.A. 60-1507 motions and failed to make findings of fact and conclusions of law on his ineffective assistance of counsel claims as required under Supreme Court Rule 183(j). Logan contends that there was insufficient evidence for the district court to find appellate counsel Kai Tate Mann did not provide ineffective assistance of counsel and that an evidentiary hearing was warranted. Logan requests that this court remand the district court's decision for an evidentiary hearing to determine whether his appellate counsel provided ineffective assistance of counsel.

Standard of review

A district court has three options when examining a K.S.A. 60-1507 motion:

> """(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. 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.'" [Citations omitted.]'" *State v. Adams*, 311 Kan. 569, 578, 465 P.3d 176 (2020).

When a district court summarily dismisses a K.S.A. 60-1507 motion without an evidentiary hearing—as happened here—an appellate 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 relief. *Beauclair v. State*, 308 Kan. 284, 293, 419 P.3d 1180 (2018). Also, whether the district court's findings of fact and conclusions of law comply with Supreme Court Rule 183(j) is a question of law that is reviewed de novo. See *Requena v. State*, 310 Kan. 105, 110, 444 P.3d 918 (2019).

The movant bears the burden of establishing entitlement to an evidentiary hearing. To meet this burden, a movant's contentions must be more than conclusory, and either the movant must set forth an evidentiary basis to support those contentions or the basis must be evident from the record. *Thuko v. State*, 310 Kan. 74, 80, 444 P.3d 927 (2019). If this showing is made, the court must hold a hearing unless the motion is a second or successive motion seeking similar relief. *Sola-Morales v. State*, 300 Kan. 875, 881, 335 P.3d 1162 (2014). In other words, the district court shall hold an evidentiary hearing on a K.S.A. 60-1507 motion, unless the motion, files, and records of the case conclusively

show the movant is not entitled to relief. K.S.A. 2023 Supp. 60-1507(b); Supreme Court Rule 183(f) and (j).

The district court did not err by summarily denying Logan's K.S.A. 60-1507 motions.

Logan's two K.S.A. 60-1507 motions filed below alleged multiple grounds for relief. On appeal, however, Logan abandons all other issues raised below and does not specify which issue from the two motions he is asserting on appeal. Logan's only argument, which is a hybrid issue from the two motions, is that his appellate counsel's performance was deficient because Mann failed to raise as an issue the ineffective assistance of Logan's trial counsel—Jeffery Adam—when entering Logan's guilty plea. Issues not adequately briefed are deemed waived or abandoned and should not be considered by this court. *State v. Davis*, 313 Kan. 244, 248, 485 P.3d 174 (2021). Indeed, when an issue is inadequately briefed and unsupported by pertinent authority, we may dismiss it as waived or abandoned. *In re Marriage of Williams*, 307 Kan. 960, 977, 417 P.3d 1033 (2018) (dismissing issue for inadequate briefing); *In re Adoption of T.M.M.H.*, 307 Kan. 902, 912, 416 P.3d 999 (2018) (dismissing issue for failing to reference supporting authority).

Thus, we need consider only if the district court made the proper findings of facts and conclusions of law, and whether the motions, files, and records of the case conclusively establish that Logan is not entitled to relief based on his ineffective assistance of counsel claim against Mann.

Standards for reviewing claims of ineffective assistance of counsel in K.S.A. 60-1507 claims.

To prevail on a claim of ineffective assistance of trial counsel, a criminal defendant must establish (1) that the performance of defense counsel was deficient under

the totality of the circumstances, and (2) that the deficient performance prejudiced the defendant. *Sola-Morales*, 300 Kan. at 882 (citing on *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 [1984]).

To establish deficient performance under the first prong, the defendant must show that defense counsel's representation fell below an objective standard of reasonableness. *State v. Evans*, 315 Kan. 211, 218, 506 P.3d 260 (2022). Judicial scrutiny of counsel's performance in a claim of ineffective assistance of counsel must be highly deferential and requires consideration of all the evidence before the judge or jury. *State v. Sprague*, 303 Kan. 418, 426, 362 P.3d 828 (2015). A fair assessment of counsel's performance requires that every effort be made to eliminate the distorting effects of hindsight, reconstruct the circumstances surrounding the challenged conduct, and evaluate the conduct from counsel's perspective at the time. *Evans*, 315 Kan. at 218. A court considering a claim of ineffective assistance of counsel must strongly presume that defense counsel's conduct fell within the wide range of reasonable professional assistance; that is, the defendant must overcome the strong presumption that, under the circumstances, counsel's actions might be considered sound trial strategy. *Khalil-Alsalaami v. State*, 313 Kan. 472, 486, 486 P.3d 1216 (2021). "An attorney's strategic decisions are essentially not challengeable if the attorney made an informed decision based on a thorough investigation of the facts and the applicable law. [Citations omitted.]" *Wilson v. State*, 51 Kan. App. 2d 1, 14, 340 P.3d 1213 (2014).

Under the second prong, the defendant must show that defense counsel's deficient performance was prejudicial. To establish prejudice, the defendant must show with reasonable probability that the deficient performance affected the outcome of the proceedings, based on the totality of the evidence. A court hearing a claim of ineffective assistance of counsel must consider the totality of the evidence before the judge or jury. *Khalil-Alsalaami*, 313 Kan. at 486. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Evans*, 315 Kan. at 218.

Logan's ineffective assistance of appellate counsel claim.

Logan claims that Mann's performance fell below the objective standard of reasonableness because Mann failed to raise as issues the district court's findings of fact and conclusions of law regarding the quality of Adam's performance as Logan's counsel; whether Adam misled, coerced, mistreated, or unfairly took advantage of Logan; or whether the plea was fairly and understandingly made. Logan argues that Mann's performance was patently deficient as he failed to make an "*Edgar* argument"—that but for Adam's performance, the result of the proceeding would have been different. See *State v. Edgar*, 281 Kan. 30, 36, 127 P.3d 986 (2006).

Similar to the two-prong test articulated in *Strickland*, and adopted by the Kansas Supreme Court in *Chamberlain v. State*, 236 Kan. 650, 656-57, 694 P.2d 468 (1985), to establish ineffective assistance of counsel on appeal, defendant must show (1) counsel's performance fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's deficient performance, the appeal would have been successful. *Khalil-Alsalaami*, 313 Kan. at 526. But when a defendant files a presentence motion to withdraw a plea alleging ineffective assistance of counsel, the constitutional test for ineffective assistance does not apply. Instead, courts apply a lower standard, and mere "'lackluster advocacy'" may be enough to provide statutory good cause for presentence withdrawal of a plea. *State v. Herring*, 312 Kan. 192, 198, 474 P.3d 285 (2020).

To find Mann's representation was ineffective, this court must first find that Mann's decision not to raise Adam's representation during the entering of Logan's plea fell below the objective standard of reasonableness and that the result of the failure affected the outcome of the appeal. *Khalil-Alsalaami*, 313 Kan. at 526. Courts must remain mindful that their scrutiny of an attorney's past performance is highly deferential and viewed contextually, free from the distorting effects of hindsight. 313 Kan. at 486.

The reviewing court must strongly presume that counsel's conduct fell within the broad range of reasonable professional assistance. *State v. Kelly*, 298 Kan. 965, 970, 318 P.3d 987 (2014). Also, the failure of appellate counsel to raise an issue on appeal is not, per se, ineffective assistance of counsel. *Miller v. State*, 298 Kan. 921, 932, 318 P.3d 155 (2014). An appellate counsel need not include every possible issue on appeal. Rather, this court has long held that "'[e]xperienced advocates since time beyond memory have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues.'" *Baker v. State*, 243 Kan. 1, 5, 755 P.2d 493 (1988). This means that an appellate counsel exercising reasonable professional judgment should only raise issues which have merit and should not set forth on appeal issues that are weak, without merit, or could result in nothing more than harmless error. 243 Kan. at 10.

On appeal, Logan supports his argument by asserting that he tried to have Adam removed as his counsel during the motion to withdraw his plea. First, Logan stated in his motion to withdraw his plea that Adam was showing bias towards him and would not listen to anything he wanted to say. Second, Logan stated that Adam threatened and coerced him into taking the deal and that, if he did not take the plea, the court would sentence all his cases consecutively. The district court appointed Julie Effenbeck as Logan's new trial counsel and conducted an evidentiary hearing.

During the hearing for his motion to withdraw his plea, Logan testified Adam was biased because Adam thought Logan was guilty. Logan stated that he felt threatened or coerced into taking the plea because Adam told him to take the plea, or he would be sentenced to more time in prison. Logan claimed he was threatened or coerced because he felt like was being pushed through the system as quickly as possible because Adam saw him as guilty. Logan also testified that he was not good with words and had trouble reading because he had a hard time understanding things sometimes. Concluding the hearing, Effenbeck argued that it was evident that Logan had a tough time

comprehending things. Effenbeck claimed that Logan did not make the plea knowingly and should undergo a competency examination to determine whether he can comprehend what he is doing.

The State countered, arguing that Adam performed competently as Logan's counsel and that Logan knew what he was doing. The State called Adam as a witness, and he testified he did not threaten or coerce Logan into agreeing to take the plea agreement. In fact, Adam testified that just before entering the plea, Logan told Adam that he did not want to go forward with the plea. Adam stated that he did not force Logan to go forward with the plea at that time or tell Logan that he was guilty and needed to accept the plea agreement. Adam also testified that Logan later wanted the deal again, and he notified Logan that it was not going to be possible but that he would try to get the deal back. When Adam managed to get the plea deal back, he stated Logan agreed to accept the plea and he took the time to go over all the paperwork with Logan again. Again, Adam stated that he did not threaten or coerce Logan to agree to the plea and advised him what the possible consequences would be to go to trial and what would happen if he was convicted. During cross-examination, Adam conceded that Logan did have problems comprehending things and that sometimes Logan would still not understand after explaining things to him multiple times.

Following the motion hearing, the district court denied Logan's motion to withdraw his plea. The district court detailed that Logan had an unusual opportunity to regain the original plea and was afforded a second chance to review the plea in writing. The district court held that "all of the constitutional statutory rights provided to him, the consequences of entering the plea, [and] the potential maximum sentences in that count" were reviewed by the court, and Logan understood the plea, signed it, and made a knowing and voluntary decision to enter his plea. In addition to the trial rights, the potential sentences, the implication of giving up those rights, and the rights afforded to

him, the district court also found that Logan agreed that he had sufficient time to speak with Adam and was satisfied with the advice Adam provided.

As for the question of Logan's competency and the representation of Adam, the district court held both lacked merit. The district court found:

> "Mr. Adam's practiced in this Court before and the Court did not find any credibility as to an allegation that he forced or coerced the defendant to take a plea. Instead the Court finds that Mr. Adam acted according to his obligation to zealously advocate for his client. He met with his client on numerous occasions, prepared for trial, filed appropriate motions, advocated for the defense of his client, and in so doing analyzed the case, the weight of the evidence, the charges against the defendant, potential sentences in light of what he believed the criminal history would be and advised his client accordingly. It would be unreasonable and ineffective had he not advised his client on those potential punishments and the potential outcome of a case. Advising a client that they could receive more time at trial if they do not accept a plea and evaluating the evidence would be a disservice to that client. That is not coercing or forcing a client. That is providing competent legal services. And in this case Mr. Adam provided those services.
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> . . . .
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> "At no point in these proceedings, numerous proceedings, has this Court had any concern regarding the defendant's ability to understand the nature and consequences of the proceedings, assist his counsel or provide for the assistance in that representation. In other words, the defendant is competent. The defendant is articulate in that he understands the nature and consequences, the rights afforded him. He is very familiar with the potential sentences involved and there is nothing to indicate to this Court that a learning disability interfered in any way with his ability to make a knowing, voluntary and intelligent decision, which is what he made.
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> "The Court finds that the defendant was represented by competent counsel, the defendant was not misled, he was not coerced, he was not mistreated, he was not unfairly taken advantage of and that the plea was fairly and understandingly made."

The district court's journal entry also found as follows:

> "1. The Court finds that the defendant was represented by competent counsel at the time the defendant entered his no contest pleas.
> "2. The Court finds that the defendant was not misled, coerced, mistreated or unfairly taken advantage of.
> "3. The Court finds the defendant's pleas were fairly and understandingly made.
> "4. The Court finds that the defendant has not shown good cause to withdraw his pleas entered on February 23, 2016 and denies the defendant's Motion to Withdraw Plea."

During the hearing for his motion to withdraw his plea, Logan failed to establish how Adam was biased or how Adam threatened or coerced him into taking the deal. Logan's testimony was conclusory and presented no examples or supporting evidence. On the contrary, the record favors the State's argument that Adam's performance was not ineffective. First, as the district court pronounced, Logan entered into the plea agreement voluntarily and knowingly, acknowledging the terms of his plea agreement, and Adam certified Logan's plea agreement. Second, Adam's testimony supported that Logan was not misled, coerced, mistreated, or unfairly taken advantage of. Rather, as the district court held, Adam zealously advocated for Logan and provided competent legal services at the time Logan entered his plea. Logan failed to show how the result of the proceeding would have been different but for Adam's performance as trial counsel. As a result, the district court's findings of fact and the conclusions of law regarding Adam's representation of Logan—whether Adam misled, coerced, mistreated, or unfairly took advantage of Logan or whether the plea were fairly and understandingly made—were sufficient to support its decision to deny Logan's motion to withdraw his plea.

To support his argument on appeal that Mann's performance was deficient, Logan relies on several court cases that are not within Kansas jurisdiction. Mainly, Logan cites *Overstreet v. Warden*, 811 F.3d 1283 (11th Cir. 2016), to support his argument. In *Overstreet*, between Overstreet's conviction and appeal, the Supreme Court of Georgia

issued an opinion modifying an element of the crime Overstreet was convicted under. Overstreet's appellate counsel filed a brief 15 months after and neglected to argue the reversal of Overstreet's conviction based on the Supreme Court of Georgia case or its progeny specifically on appeal. 811 F.3d at 1285-86. The Eleventh Circuit found that Overstreet's appellate counsel "either failed to recognize or elected not to raise this strong basis for reversal of four criminal convictions," and found the counsel's performance patently deficient. 811 F.3d at 1287.

Yet *Overstreet* is not comparable to the instant case. Here, there was no new caselaw that overturned any elements of the crime Logan was convicted under. Nor is there any change in the standard of the law that the appellate counsel should have raised on appeal. There is no strong basis for reversal in Logan's case and, as discussed above, raising Adam's representation of Logan would not have likely resulted in a successful appeal. Also, Federal Circuit Court of Appeals cases may be considered persuasive, but they are in no way binding on this court. *State v. Jones*, 47 Kan. App. 2d 866, 878, 280 P.3d 824 (2012), *aff'd* 300 Kan. 630, 333 P.3d 886 (2014).

Logan's argument on appeal is not supported by any new evidence and does not raise any new arguments alleging facts not included in the record. Logan fails to satisfy his burden to overcome the presumption that, under the circumstances, appellate counsel's decision could have been sound strategy. *Khalil-Alsalaami*, 313 Kan. at 486; see also *State v. Hutto*, 313 Kan. 741, 750, 490 P.3d 43 (2021) (Strategic choices made by counsel after a thorough investigation of the law and facts relevant to plausible options are virtually unchallengeable.). Logan is asking this court to blankly presume, without evidence or designation to the record, that Mann's performance fell below the objective standard of reasonableness. This court does not fill in the blanks of the record by making assumptions in favor of the moving party. *State v. Morgan*, No. 109,099, 2014 WL 5609935, at *8 (Kan. App. 2014) (unpublished opinion) (citing *Harman v. State*, No. 108,478, 2013 WL 3792407, at *1 [Kan. App. 2013] [unpublished opinion]). Logan

failed to show how his appellate counsel's performance was deficient and fell below the objective standard of reasonableness under the totality of the circumstances.

If the defendant fails to prove the first prong of the *Strickland* test, there is no need to progress to the second prong of the test showing prejudice. *State v. Betancourt*, 301 Kan. 282, 308, 342 P.3d 916 (2015.) The United States Supreme Court emphasized in *Strickland* the significance of the prejudice prong of the ineffective assistance of counsel test by stating that such claim "could be disposed of solely on that ground if the defendant failed to establish that he or she suffered prejudice." *Edgar v. State*, 294 Kan. 828, 843, 283 P.3d 152 (2012). Thus, in applying *Strickland*, Logan fails under the first prong of the *Strickland* test for the reasons discussed above. Consequently, the second prong of the test need not be explored by this court. But even if this this court were to assume that Logan managed to show Mann's performance was deficient, his argument also fails on the second prong.

Thus, the district court's summary denial was not erroneous, and the court correctly found that the motions, files, and records of the case conclusively showed that Logan was not entitled to relief based on his ineffective assistance of counsel claim.

Logan's second K.S.A. 60-1507 motion

Under his second motion, Logan contended that the district court erred by denying his motion to withdraw his plea because (1) he was not represented by competent counsel; (2) he was misled, coerced, or taken advantage of; and (3) his plea was not fairly and understandingly made. He also asserted that the State failed to disclose favorable evidence to him or his counsel in violation of the Fourteenth Amendment to the United States Constitution. In addition, he argued that the complaint against him was defective because it did not state his age when the crime of aggravated criminal sodomy was supposed to have been committed.

The district court summarily denied this motion as untimely and successive because Logan had failed to show any exceptional circumstances and manifest injustice in support of his second K.S.A. 60-1507 motion.

A movant bears the burden of establishing entitlement to an evidentiary hearing. To meet this burden, a movant's contentions must be more than conclusory, and either the movant must set forth an evidentiary basis to support those contentions or the basis must be evident from the record. *Thuko*, 310 Kan. at 80. If this showing is made, the court must hold a hearing unless the motion is a second or successive motion seeking similar relief. *Sola-Morales*, 300 Kan. at 881; see also *Littlejohn v. State*, 310 Kan. 439, Syl., 447 P.3d 375 (2019) ("An inmate filing a second or successive motion under K.S.A. 60-1507 must show exceptional circumstances to avoid having the motion dismissed as an abuse of remedy."); *State v. Sprague*, 303 Kan. 418, 425, 362 P.3d 828 (2015) (applying initial pleading requirements when reviewing denial of posttrial, presentencing motion for ineffective assistance of counsel).

"[U]nder K.S.A. 2020 Supp. 60-1507(c), district courts need not consider more than one habeas motion seeking similar relief filed by the same prisoner." *State v. Mitchell*, 315 Kan. 156, 160, 505 P.3d 739 (2022); see Supreme Court Rule 183(d). A movant is presumed to have listed all grounds for relief in an initial K.S.A. 60-1507 motion and, therefore, "must show exceptional circumstances to justify the filing of a successive motion." *Mitchell*, 315 Kan. at 160.

Exceptional circumstances are unusual events or intervening changes in the law that prevented the movant from reasonably being able to raise the issue in the first postconviction motion. 315 Kan. at 160. Exceptional circumstances can include ineffective assistance of counsel claims and a colorable claim of actual innocence based on the crime victim's recantation of testimony that formed the basis of the charge against the defendant. See *Beauclair*, 308 Kan. at 304 (colorable claim of actual innocence);

Rowland v. State, 289 Kan. 1076, 1087, 219 P.3d 1212 (2009) (ineffective assistance of counsel). In deciding whether a district court erred in summarily denying a K.S.A. 60-1507 motion as abuse of remedy, the appellate court's test should be whether the movant "presented exceptional circumstances to justify reaching the merits of the motion, factoring in whether justice would be served by doing so." *Littlejohn*, 310 Kan. at 446.

Logan argued in his first K.S.A. 60-1507 motion that his counsel at both the district court and appellate court levels were ineffective. But Logan failed to show how his trial counsel's and appellate counsel's performance was deficient and fell below the objective standard of reasonableness under the totality of the circumstances. As a result, Logan fails to identify any exceptional circumstances to justify the filing of a successive motion.

Also, as stated earlier, on January 23, 2019, Logan filed his first K.S.A. 60-1507 motion. Then, on September 27, 2021, Logan filed his second K.S.A. 60-1507 motion. A defendant has one year from when a conviction becomes final to file a motion under K.S.A. 60-1507(a). K.S.A. 2023 Supp. 60-1507(f)(1). Individuals who had claims preexisting the 2003 statutory amendment had until June 30, 2004, to file a timely K.S.A. 60-1507 motion. *Noyce v. State*, 310 Kan. 394, 399, 447 P.3d 355 (2019).

"'A defendant who files a motion under K.S.A. 60-1507 outside the 1-year time limitation in K.S.A. 60-1507(f) and fails to assert manifest injustice is procedurally barred from maintaining the action.'" *State v. Roberts*, 310 Kan. 5, 13, 444 P.3d 982 (2019) (quoting *State v. Trotter*, 296 Kan. 898, Syl. ¶ 3, 295 P.3d 1039 [2013]). Here, Logan has filed his second K.S.A. 60-1507 motion nearly two years after he filed his first K.S.A. 60-1507 motion. Also, he has failed to assert manifest injustice in support of his second K.S.A. 60-1507 motion. And because Logan does not show any exceptional circumstances, we affirm the district court's ruling that Logan's second K.S.A. 60-1507 motion was untimely and successive.

As for Logan's ineffective assistance of counsel claims, the district court's summary denial of his motion was not erroneous, and the court correctly found that the motion, file, and record of that case conclusively showed that Logan was not entitled to relief based on his ineffective assistance of counsel arguments.

Affirmed.