

NOT DESIGNATED FOR PUBLICATION

No. 126,248

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

SARAH D. SOTO,
Appellant.

MEMORANDUM OPINION

Appeal from Douglas District Court; STACEY L. DONOVAN, judge. Submitted without oral argument. Opinion filed April 26, 2024. Affirmed.

Darby VanHoutan, of Kansas Appellate Defender Office, for appellant.

Brian Deiter, assistant district attorney, *Caitlin Riffer*, legal intern, *Jon Simpson*, senior assistant district attorney, *Suzanne Valdez*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before BRUNS, P.J., GARDNER and ISHERWOOD, JJ.

PER CURIAM: Sarah D. Soto appeals her sentence for aggravated burglary, claiming the district court abused its discretion by denying her request for a dispositional departure. Finding no error, we affirm.

Factual and Procedural Background

In March 2022, the State charged Soto with aggravated burglary and theft based on allegations that Soto had unlawfully entered a home with a friend and had stolen items from there. Pursuant to a plea agreement with the State, Soto pleaded no contest to aggravated burglary, and the State dismissed a second charge.

Before sentencing, Soto moved for a dispositional and durational departure from her presumptive 45-month prison sentence. She requested either a term of probation or 12 months' incarceration. Soto argued that this lesser sentence was warranted because she thought she had permission to be in the house, she had accepted responsibility, and she had no prior felony convictions.

As for the facts of her crime, Soto admitted to entering the victims' house with a friend, taking a shower and a nap, and stealing \$27 and a cup filled with orange juice. But Soto claimed that she mistakenly believed that the house belonged to her friend's family member and that she had permission to be there. Soto also admitted that a nine-year-old girl entered the house while she was still inside, but Soto left the house right after seeing her.

At the sentencing hearing, Soto emphasized that she had recently participated in drug treatment and provided a personal statement about her history of substance abuse and homelessness. Soto also explained that she had recently obtained full-time employment, taken advantage of rehabilitative services, and completed a rehabilitation program. And noting the significance of these efforts, Soto promised to continue working toward her sobriety and rehabilitation if granted probation.

The State argued that Soto failed to present substantial and compelling reasons to depart from the presumptive sentence. The State added that although limited, Soto's

criminal history showed Soto committed five crimes over the previous nine years. The State also argued that Soto already "had an opportunity to have probation and rehabilitat[ion] . . . [but] continue[d] to steal and trespass."

The State also presented testimony from Heather Hudson, the owner of the house Soto had entered. Hudson described the negative effects that Soto's crime had on her and her family, detailing the fear that Soto's crime continued to cause her four- and nine-year-old daughters. Hudson testified that her daughters lost sleep, struggled in school, and began hiding weapons and barricading doors in their home. One of the girls also enrolled in therapy sessions to treat the anxiety caused by the break-in.

After considering the parties' claims, the district court denied Soto's request for a dispositional departure but granted her a durational departure of 24 months in prison. The district court found that Soto believed she "had the ability and authorization to enter [the house]" based on the actions that she took while inside. In addition, the district court found that Soto's "lack of felonies . . . and no violence" in her criminal history supported substantial and compelling reasons to depart from the presumptive term.

Soto timely appeals the district court's sentencing her to prison instead of to probation.

Did the District Court Err in Denying Soto's Motion for a Dispositional Departure?

Soto raises only one issue on appeal, challenging the district court's denial of her request for a dispositional departure. The State claims that Soto fails to show an abuse of discretion and thus asks us to affirm the district court's decision.

Jurisdiction

We first note that we have jurisdiction to review Soto's claim because the district court granted Soto a durational departure under K.S.A. 21-6820(a). See *State v. Looney*, 299 Kan. 903, 907-08, 327 P.3d 425 (2014).

Standard of Review & Basic Legal Principles

As provided under K.S.A. 21-6815(a), the district court shall impose the presumptive sentence provided by the sentencing guidelines unless the court finds substantial and compelling reasons to impose a departure sentence. K.S.A. 21-6815(c) sets forth a nonexclusive list of mitigating factors that may be considered in determining whether substantial and compelling reasons for a departure exist. We review the district court's determination of whether mitigating factors are substantial and compelling reasons to depart for an abuse of discretion. *State v. Whorton*, 292 Kan. 472, 474, 254 P.3d 1268 (2011). A judicial action constitutes an abuse of discretion if (1) it is arbitrary, fanciful, or unreasonable; (2) it is based on an error of law; or (3) it is based on an error of fact. *State v. Bilbrey*, 317 Kan. 57, 63, 523 P.3d 1078 (2023). As the party asserting error, Soto has the burden to show the district court abused its discretion. See *State v. Keys*, 315 Kan. 690, 708, 510 P.3d 706 (2022).

No Abuse of Discretion Shown

Soto claims that she provided substantial and compelling reasons to grant a dispositional departure. She does not contend that the district court based its decision on legal or factual error and instead challenges the decision as unreasonable. Soto relies primarily on her criminal history and the nonviolent nature of the facts surrounding her crime to support this claim. She contends that the district court should have given greater weight to the following factors:

- She entered a plea rather than go to trial, saving the district court time and resources;
- The facts of her crime included no violence and less harm than found in similar scenarios;
- She accepted responsibility;
- She lacked a significant or violent criminal history; and
- She provided proof of her tumultuous past—indicating a need for treatment—and recent success in drug abuse treatment, full-time employment, and willingness to use available community programs if granted probation.

The record shows that the district court appropriately weighed the circumstances before imposing a sentence within its authority. The court found the mitigating facts surrounding Soto's crime and her nonviolent criminal history constituted substantial and compelling reasons to grant a durational departure. The district court also found that Soto had "a very tough time" and "made decisions that [she] very much regret[ted]." But the district court also explained that Soto needed to serve "some time in custody" to account for the harm she caused the victims. And ultimately, the district court found that Soto failed to provide substantial and compelling reasons to depart to a probation sentence.

We agree that the factors Soto references, including the acceptance of responsibility, can be mitigating factors which support a departure sentence. See *State v. Morley*, 312 Kan. 702, 711-12, 479 P.3d 928 (2021). And another sentencing court may have found Soto's criminal history and the facts surrounding her crime warranted a greater departure than the sentence granted here. But we cannot reweigh evidence. *Bilbrey*, 317 Kan. at 63. Nor can we say that no reasonable person could take the view adopted by the district court. See *State v. Powell*, 308 Kan. 895, 902, 425 P.3d 309 (2018). "[E]ven though mitigating circumstances must be present for a finding of substantial and compelling reasons, mitigating circumstances do not necessarily equal substantial and compelling reasons" to depart. *State v. Jolly*, 301 Kan. 313, 323, 342 P.3d

935 (2015). Soto thus fails to show that the district court abused its discretion by improperly weighing the relevant factors for a dispositional departure.

Finally, Soto suggests that because the district court found substantial and compelling facts supporting a durational departure, it should have also found the same facts warranted a dispositional departure. We disagree, as Soto cites no authority requiring a district court to do so, and we know of none.

Because the district court did not abuse its discretion in denying Soto's motion for a dispositional departure, we affirm.

Affirmed.