

NOT DESIGNATED FOR PUBLICATION

No. 126,753

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

MANUEL HERNANDEZ,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Sedgwick District Court; BRUCE C. BROWN, judge. Opinion filed October 4, 2024.  
Appeal dismissed.

Submitted by the parties for summary disposition under K.S.A. 21-6820(g) and (h).

Before ARNOLD-BURGER, C.J., GARDNER and CLINE, JJ.

PER CURIAM: Manuel Hernandez appeals his presumptive prison sentence for three counts of drug related crimes, arguing the district court erred in denying his departure motion. We granted Hernandez' motion for summary disposition in lieu of briefs pursuant to Kansas Supreme Court Rule 7.041A (2024 Kan. S. Ct. R. at 48). In reviewing the record and his motion, we find we have no jurisdiction over the issue Hernandez raises on appeal. Thus, we dismiss his appeal for lack of jurisdiction.

In May 2023, the district court found Hernandez guilty of two counts of distribution of a controlled substance, a severity level 3 drug felony, and proceeds derived from violation of drug laws, a severity level 5 drug felony. Hernandez filed a motion for dispositional departure seeking probation instead of imprisonment or,

alternatively, a durational departure limiting imprisonment time. He argued a dispositional departure would be appropriate because community based programs, instead of prison, would better help promote his reformation. He also maintained that because he accepted responsibility for his actions, a departure was warranted. Hernandez believed these factors constituted "substantial and compelling reason[s] to depart" from the presumptive sentence.

At the sentencing hearing, the State asked the district court to follow the plea agreement. Hernandez' counsel argued the district court should follow his departure motion. The district court ultimately accepted the plea agreement, denied Hernandez' departure motion, and imposed presumptive prison sentences for all three counts. The district court sentenced Hernandez to a prison term of 51 months for distribution of a controlled substance, a prison term of 49 months for the distribution of a controlled substance, and a prison term of 11 months for attempted theft to be served concurrently.

Hernandez appeals the district court's sentencing decision.

Hernandez argues the district court erred in denying his departure motion. He believes the district court should have ordered mitigated terms rather than imposing presumptive sentences. But as Hernandez concedes, Kansas statutes and caselaw do not jurisdictionally permit this court to review the imposition of presumptive sentences, which includes the district court's denial of Hernandez' departure motion. See K.S.A. 21-6820(c)(1); *State v. Huerta*, 291 Kan. 831, 837, 247 P.3d 1043 (2011); *State v. Johnson*, 286 Kan. 824, 841-52, 190 P.3d 207 (2008). We lack jurisdiction to consider whether the district court erred.

Appeal dismissed.