

NOT DESIGNATED FOR PUBLICATION

No. 114,901

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

KAREY MARTIN STOUT,
Appellant.

MEMORANDUM OPINION

Appeal from Chautauqua District Court; JEFFREY GOSSARD, judge. Opinion filed June 10, 2016.
Appeal dismissed.

Submitted for summary disposition pursuant to K.S.A. 2015 Supp. 21-6820(g) and (h).

Before MALONE, C.J., BUSER and BRUNS, JJ.

Per Curiam: Karey M. Stout appeals his sentence following his conviction of attempted aggravated indecent liberties with a child. We granted Stout's motion for summary disposition in lieu of briefs pursuant to Supreme Court Rule 7.041A (2015 Kan. Ct. R. Annot. 67). The State has filed no response.

On April 1, 2015, Stout pled no contest to one count of attempted aggravated indecent liberties with a child. The district court held a sentencing hearing on July 15, 2015. At the hearing, Stout moved for border box findings, requesting a nonprison sanction because he had no criminal history, he was not a danger to the community, he held a full time job to support his family, and he had taken responsibility for his actions.

The district court denied Stout's motion for a nonprison sanction and imposed a presumptive sentence of 32 months' imprisonment. Stout timely appealed.

On appeal, Stout asserts that the district court abused its discretion in failing to make border box findings. See K.S.A. 2015 Supp. 21-6804(q)(1)-(3). But as Stout acknowledges, the imposition of a prison sentence in a border box case does not constitute a departure sentence. See *State v. Whitlock*, 36 Kan. App. 2d 556, 559, 142 P.3d 334, *rev. denied* 282 Kan. 796 (2006). Moreover, where the imposed sentence is within the presumptive guidelines sentence, an appellate court lacks jurisdiction to consider the appeal. See K.S.A. 2015 Supp. 21-6820(c)(1); *State v. Flores*, 268 Kan. 657, 659, 999 P.2d 919 (2000). Here, the district court imposed the standard presumptive sentence under the guidelines and this court lacks jurisdiction to review the sentence on appeal.

Appeal dismissed.