

NOT DESIGNATED FOR PUBLICATION

No. 116,125

IN THE SUPREME COURT OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

ROBERT H. LACKEY II,
Appellant.

MEMORANDUM OPINION

Appeal from Saline County District Court; PATRICK THOMPSON, judge. Opinion filed October 27, 2017.
Affirmed.

Gerald E. Wells, of Jerry Wells Attorney-at-Law, of Lawrence, was on the brief for appellant.

Ellen Mitchell, county attorney, and *Derek Schmidt*, attorney general, were on the brief for appellee.

PER CURIAM: Robert H. Lackey II appeals the district court's dismissal of his petition for DNA testing after the testing was completed and the uncontested results were unfavorable to Lackey. The testing failed to produce any noncumulative, exculpatory evidence relevant to Lackey's claim, and the district court dismissed the motion as required by statute. See K.S.A. 2016 Supp. 21-2512(f)(1)(A) (the court "[s]hall dismiss the petition" if the results of DNA testing are unfavorable to the petitioner).

In his brief, Lackey concedes there was no obvious error by the district court. He notes the district court allowed him to choose the lab that conducted the testing, and he concedes that he must live with the unfavorable results. He makes no argument

whatsoever that the district court erred by dismissing his petition pursuant to K.S.A. 2016 Supp. 21-2512(f)(1)(A).

We have carefully reviewed the record and conclude the district court adequately addressed the issues and reached the correct conclusion. The lab report issued by Genetic Technologies shows DNA testing results which are unfavorable to Lackey and do not produce any noncumulative, exculpatory evidence relevant to his claim. Some items were retested, and the new test results are consistent with the prior findings. Some items were tested for the first time, and the results either obtained no genetic profile or obtained a partial genetic profile that was rendered unsuitable for both statistical evaluation and inclusionary statements. The district court's dismissal is affirmed under Kansas Supreme Court Rule 7.042(b)(2) (2017 Kan. S. Ct. R. 48) (the appeal is without merit).