

NOT DESIGNATED FOR PUBLICATION

No. 120,375

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

ERIC B. BREWER,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Sedgwick District Court; CHRISTOPHER M. MAGANA, judge. Opinion filed June 7, 2019. Affirmed.

Submitted by the parties for summary disposition pursuant to K.S.A. 2018 Supp. 21-6820(g) and (h).

Before MALONE, P.J., LEBEN and POWELL, JJ.

PER CURIAM: Eric B. Brewer appeals the district court's sentencing, complaining the district court abused its discretion by imposing the sentences for his two battery counts consecutively, instead of concurrently as recommended in the plea agreement, and by ordering that Brewer's sentences run consecutive to his sentences in a number of prior municipal misdemeanor cases. We granted Brewer's motion for summary disposition pursuant to Supreme Court Rule 7.041A (2019 Kan. S. Ct. R. 47). The State responded by not objecting to summary disposition, but it asks that the district court's judgment be affirmed. We agree with the State and affirm.

As part of a plea agreement with the State, Brewer pled guilty to one count of felony domestic battery, a nongrid person felony, and one count of misdemeanor battery, a class B person misdemeanor. In exchange for Brewer's plea, the State agreed to recommend a 12-month jail sentence and probation from that sentence on the domestic battery count, provided that Brewer serve 120 days in jail prior to his release on probation. As to the misdemeanor battery count, the State agreed to recommend six months in jail, but also with probation, and that this sentence run concurrent with the domestic battery sentence. The plea agreement was silent on whether the sentences in this case were to run concurrent with or consecutive to sentences Brewer had in other cases. Brewer was free to argue for a different sentence.

At sentencing on October 16, 2018, the district court followed the plea agreement in most respects and imposed a 12-month jail sentence for domestic battery and 6 months in jail for misdemeanor battery. However, instead of imposing the sentences for each count concurrently in accordance with the plea agreement, the district court, citing Brewer's history of domestic violence and battery, ordered that the counts run consecutively. Additionally, the district court ordered that the sentences in this case run consecutive to the sentences imposed in any of Brewer's prior cases. The record makes reference to two or more municipal court misdemeanor sentences for domestic violence for which Brewer was currently serving probation, and the district court expressed concern that those sentences not disappear due to a concurrent sentence in the present case given Brewer's history of violence. The district court did show leniency in one instance, however, by ordering that Brewer only serve 90 days in jail before being placed on probation.

On appeal, Brewer acknowledges that the district court had the authority to run his sentences consecutively as opposed to concurrently but argues that the district court abused its discretion by doing so. See K.S.A. 2018 Supp. 21-6606(a) (sentences imposed for different crimes on the same day "shall run concurrently or consecutively as the court

directs"); K.S.A. 2018 Supp. 21-6606(b) (sentence for person who commits new crime while on probation for a misdemeanor shall be served "concurrently with or consecutively to" sentence for which person was on probation "as the court directs"); *State v. Mosher*, 299 Kan. 1, 2, 319 P.3d 1253 (2014) (district court has general discretion to determine whether sentence should run concurrent with or consecutive to another sentence). Judicial discretion is abused if the action (1) is arbitrary, fanciful, or unreasonable, i.e., if no reasonable person would have taken the view adopted by the trial court; (2) is based on an error of law; or (3) is based on an error of fact. *State v. Jones*, 306 Kan. 948, 957, 398 P.3d 856 (2017). Brewer bears the burden to show an abuse of discretion by the district court. See *State v. Rojas-Marceleno*, 295 Kan. 525, 531, 285 P.3d 361 (2012).

Given that neither party contests the district court's discretion to run the sentences for each count consecutively, as well as to order the sentence in the present case to run consecutive to his municipal misdemeanor sentences, we are left to examine the district court's exercise of discretion. Although Brewer points to statements from the victim in mitigation, given the district court's expressed concern about Brewer's history of violence, Brewer fails to convince us that no reasonable person would have taken the view of the district court. Thus, we cannot say that the district court's sentencing constitutes an abuse of discretion.

Affirmed.