

NOT DESIGNATED FOR PUBLICATION

No. 120,446

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

YESENIA SESMAS,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Sedgwick District Court; TERRY L. PULLMAN, judge. Opinion filed April 19, 2019.  
Affirmed.

Submitted for summary disposition under K.S.A. 2018 Supp. 21-6820(g) and (h).

Before ARNOLD-BURGER, C.J., MALONE and LEBEN, JJ.

PER CURIAM: Yesenia Sesmas appeals her sentence following her convictions of three counts of attempted kidnapping. We granted Sesmas' motion for summary disposition under Kansas Supreme Court Rule 7.041A (2019 Kan. S. Ct. R. 47). The State has responded and requests that the district court's judgment be affirmed.

On September 7, 2018, Sesmas pled guilty to three counts of attempted kidnapping. Sesmas' criminal history score was found to be A, based on two person felonies and one off-grid felony, all from the same earlier case, No. 16CR3374. At the sentencing hearing on October 30, 2018, Sesmas' attorney objected to using the 16CR3374 convictions as part of her criminal history score because that case was still on direct appeal. The district court rejected that argument and sentenced Sesmas to a

controlling term of 204 months' imprisonment with 24 months' postrelease supervision. Sesmas timely appealed her sentence.

On appeal, Sesmas claims the district court "erred in sentencing her as a criminal history score 'A', because the convictions that her criminal history score was based upon were, and are, still on direct appeal in appellate case number 18-119862-S." Resolution of Sesmas' claim involves statutory interpretation over which appellate courts have unlimited review. *State v. Collins*, 303 Kan. 472, 473-74, 362 P.3d 1098 (2015).

The district court was correct to reject Sesmas' argument. See *State v. Hankins*, 304 Kan. 226, 235, 372 P.3d 1124 (2016) (stating that statutory definition of "conviction" is met when defendant is adjudged guilty); K.S.A. 2018 Supp. 21-5111(d) ("Conviction" includes a judgment of guilt entered upon a plea of guilty."); K.S.A. 2018 Supp. 21-6803(c) ("criminal history" means an offender's criminal record of adult felony convictions at the time such offender is sentenced). Thus, Sesmas was "convicted" of her crimes in 16CR3374 when she was sentenced by the district court herein, and the district court correctly included Sesmas' convictions in 16CR3374 in her criminal history score even though that case is still on direct appeal.

We take judicial notice that in Docket No. 18-119862-S, the Supreme Court granted Sesmas' motion to docket her appeal out-of-time. Sesmas filed her appellate brief on February 25, 2019, but the case has not yet been scheduled for hearing. If Sesmas is successful in setting aside her convictions in 16CR3374 on direct appeal and that case becomes final, then Sesmas may be entitled to receive relief from her sentence imposed by the district court herein based on an incorrect criminal history score. See K.S.A. 2018 Supp. 22-3504(1) (the court may correct an illegal sentence at any time).

Affirmed.