IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 123,807

STATE OF KANSAS,
Appellee,

v.

TYLER D. DECK,
Appellant.

SYLLABUS BY THE COURT

Defective complaint claims are not properly raised in a motion to correct an illegal sentence under K.S.A. 2022 Supp. 22-3504.

Review of the judgment of the Court of Appeals in an unpublished opinion filed April 1, 2022. Appeal from Sedgwick District Court; BRUCE C. BROWN, judge. Opinion filed March 10, 2023. Judgment of the Court of Appeals affirming in part and vacating the sentence in part and remanding with directions is affirmed on the issue subject to review. Judgment of the district court is affirmed on the issue subject to review.

Patrick H. Dunn, of Kansas Appellate Defender Office, argued the cause and was on the briefs for appellant.

Matt J. Maloney, assistant district attorney, argued the cause, and *Marc Bennett*, district attorney, and *Derek Schmidt*, attorney general, were with him on the brief for appellee.

PER CURIAM: Tyler D. Deck pled guilty to attempted unintentional second-degree murder as part of a broader plea agreement. The district court sentenced him to 41 months in prison for that offense. He now claims the court did not have subject matter jurisdiction to impose that sentence because our caselaw has characterized the crime he

pled guilty to as "logically impossible" to commit. See *State v. Shannon*, 258 Kan. 425, 428-29, 905 P.2d 649 (1995) (noting the Kansas attempt statute requires specific intent to commit the crime charged and one cannot intend to commit an unintentional crime). The district court refused to vacate the sentence when Deck moved to correct it under K.S.A. 2020 Supp. 22-3504. A Court of Appeals panel agreed with the lower court, although it remanded the case to correct a minor journal entry mistake. *State v. Deck*, No. 123,807, 2022 WL 983628, at *5-6 (Kan. App. 2022) (unpublished opinion). We granted review to consider Deck's subject matter jurisdiction challenge to his sentence. We reject his arguments and affirm.

Unlike *Shannon*, in which the defendant on direct appeal argued for giving a jury instruction on attempted unintentional second-degree murder as a lesser included offense, Deck's chosen procedural vehicle is a motion under K.S.A. 22-3504 to correct what he labels an illegal sentence stemming from an allegedly defective criminal complaint. And we have long held defective complaint claims are not properly challenged through such a motion on that basis. See *State v. Ross*, 315 Kan. 804, Syl. ¶ 2, 511 P.3d 290 (2022) ("Defective complaint claims are not properly raised in a motion to correct an illegal sentence under K.S.A. 22-3504."); *State v. Robertson*, 309 Kan. 602, Syl. ¶ 1, 439 P.3d 898 (2019) ("A motion to correct illegal sentence filed under K.S.A. 2018 Supp. 22-3504 that alleges a defect in the charging document does not give a court jurisdiction to reverse a conviction that has become a final judgment."). We adhere to that caselaw in rejecting Deck's efforts here.

FACTUAL AND PROCEDURAL BACKGROUND

In 2014, the State charged Deck with multiple crimes in two separate cases. For our purposes, the relevant portion of the original charging document stated:

"COUNT FOUR

"AS TO TYLER D. DECK

"and on or about the 6th day of September, 2014 A.D., in the County of Sedgwick, and State of Kansas, one TYLER D. DECK did commit any overt act, to-wit: shot a firearm eight (8) times at C.A.B. hitting him at least once, toward the perpetration of a crime, to-wit: Murder in the Second Degree, as defined by K.S.A. 21-5403(a)(2), and the said TYLER D. DECK intended to commit such crime but failed in the perpetration thereof or was prevented or intercepted in executing such crime;

"OR IN THE ALTERNATIVE

"COUNT FIVE

"AS TO TYLER D. DECK

"and on or about the 6th day of September, 2014 A.D., in the County of Sedgwick, and State of Kansas, one TYLER D. DECK did then and there unlawfully and knowingly cause great bodily harm to another person or disfigurement of another person, to-wit: C.A.B."

The statutory reference in count four to K.S.A. 2014 Supp. 21-5403(a)(2) provides: "Murder in the second degree is the killing of a human being committed . . . unintentionally but recklessly under circumstances manifesting extreme indifference to the value of human life."

The State later amended this charging document to delete the alternative language between Deck's count four and count five. This left the attempted unintentional second-degree murder charge in count four standing apart from the aggravated battery alleged in count five. The amended complaint made no other relevant changes.

Deck entered into a global plea agreement in both cases to exchange his guilty pleas to attempted intentional second-degree murder, as well as count four's attempted unintentional second-degree murder, for the State's agreement to dismiss the remaining charges. The district court accepted the pleas and imposed concurrent 233-month and 41-month prison terms, respectively. The journal entry of judgment, however, mistakenly listed the attempted unintentional second-degree murder offense as a level three felony with a 59-month prison term.

In 2020, Deck filed a pro se motion to correct an illegal sentence under K.S.A. 2020 Supp. 22-3504, challenging the attempted unintentional second-degree murder conviction. He claimed that under *Shannon* the amended complaint failed to charge a recognized Kansas crime. In his view, this meant the State could not have invoked the district court's subject matter jurisdiction to prosecute him for what he said was an unrecognized crime. And without jurisdiction, he continued, the court could not accept his guilty plea or sentence him for the attempted unintentional second-degree murder conviction. He asked the court to vacate both the conviction and its attendant sentence. He later revised the motion to limit relief to just vacating his sentence.

The district court summarily denied the motion, without reaching the merits, explaining:

> "Once a sentence is imposed a trial court does not have authority to address the validity of defendant's sentence in the criminal case other than through a motion to correct illegal sentence . . . . Despite entitling the motion as a 'Motion to Correct Illegal Sentence', it is not legally such. . . . A defendant may not collaterally attack a conviction through a motion to correct illegal sentence . . . . [E]ven if this court had jurisdiction the motion lacks merit."

Deck appealed and refined his arguments to rely on *State v. Dunn*, 304 Kan. 773, 811, 375 P.3d 332 (2016), in which the court held charging documents need only allege facts constituting a Kansas offense committed by the defendant. He claimed that since the facts alleged in count four did not constitute an "actual" Kansas crime, any charging document alleging those facts was jurisdictionally defective. He maintained that because the statutory definition of "illegal sentence" is one imposed by a court without jurisdiction, his sentence was illegal. He also sought to revive a challenge to the underlying conviction.

In the alternative, Deck asked the panel to remand the case to the district court with instructions to issue a nunc pro tunc order correcting the mistaken journal entry that specified a 59-month prison term, rather than the 41 months pronounced. See *State v. Juiliano*, 315 Kan. 76, 84, 504 P.3d 399 (2022) ("[I]f there is a discrepancy between the pronounced sentence and the written journal entry, our court has held that the pronounced sentence controls."). The State agreed with this alternative relief.

The panel rejected Deck's jurisdictional defect claim but accepted the uncontroverted alternative relief to correct the 59-month notation in the journal entry on remand. *Deck*, 2022 WL 983628, at *5-6. Deck petitioned this court for review solely on the sentencing jurisdiction issue, which we granted. Jurisdiction is proper. See K.S.A. 20-3018(b) (providing for petitions for review of Court of Appeals decisions); K.S.A. 60-2101(b) (Supreme Court has jurisdiction to review Court of Appeals decisions upon petition for review).

DISCUSSION

Subject matter jurisdiction is the court's power to hear and decide a particular type of action. Its existence cannot be waived, and its nonexistence can be challenged at any

time. *Dunn*, 304 Kan. at 784. The Kansas Constitution's article 3, section 6(b) provides: "The district courts shall have such jurisdiction in their respective districts as may be provided by law." K.S.A. 20-301 vests district courts with "general original jurisdiction of all matters, both civil and criminal, unless otherwise provided by law." And K.S.A. 22-2601 gives district courts "exclusive jurisdiction to try all cases of felony and other criminal cases arising under the statutes of the state of Kansas."

A sentence is illegal if it is "[i]mposed by a court without jurisdiction," which is not waivable. K.S.A. 2022 Supp. 22-3504(c)(1). "The court may correct an illegal sentence at any time while the defendant is serving such sentence." K.S.A. 2022 Supp. 22-3504(a). Put more simply, just because Deck pled guilty to count four does not mean he waived any jurisdictional challenge against his sentence associated with his conviction on that count. See *State v. Brown*, 299 Kan. 1021, 1030, 327 P.3d 1002 (2014) (subject matter jurisdiction cannot be conferred by consent, waiver, estoppel).

An appellate court exercises unlimited review over jurisdictional matters, and when that analysis involves statutory interpretation, the court employs de novo review. See *State v. Jackson*, 314 Kan. 178, 179-80, 496 P.3d 533 (2021) (whether a sentence is illegal is a legal question subject to unlimited review); *State v. Smith*, 311 Kan. 109, 111, 456 P.3d 1004 (2020) (applying a de novo analysis to a statutory interpretation question); *Dunn*, 304 Kan. at 784 (whether subject matter jurisdiction exists is a legal question subject to unlimited review).

Deck's claim must fail because our courts have consistently held that a motion to correct an illegal sentence cannot be the procedural mechanism to challenge a defective complaint, which is his real grievance, even though he creatively focuses his requested relief on the resulting prison sentence that is its by-product. It is worth discussing the controlling caselaw in a bit more detail.

In *State v. Nash*, 281 Kan. 600, 601, 133 P.3d 836 (2006), the defendant attacked his conviction for aggravated robbery claiming it stemmed from a defective complaint because of the way the crime was charged. The court rejected this criticism without considering the alleged flaws. See 281 Kan. at 602 ("In essence, the defendant is seeking to use the correction of an illegal sentence statute as the vehicle for a collateral attack on a conviction. Such relief is not available under K.S.A. 22-3504."). The next year, and relying on *Nash*, the court again rejected an illegal sentence claim based, in part, on errors alleged in the criminal complaint. See *State v. Hoge*, 283 Kan. 219, 226, 150 P.3d 905 (2007) ("Relief is not available to Hoge under K.S.A. 22-3504 for the type of defects he alleges in the complaint."). And this prohibition continued the next year in *State v. Deal*, 286 Kan. 528, 186 P.3d 735 (2008), when Deal argued the criminal complaint under which he was convicted was jurisdictionally defective because he claimed it added elements not required by the first-degree murder statute. The court rejected this and four related contentions attacking the complaint, noting: "Simply put, Deal does not attack his sentence: he merely challenges his conviction." 286 Kan. at 530.

Following *Deal*, our court has consistently viewed disputes advanced through K.S.A. 22-3504 motions about a criminal complaint's potential defects as inappropriate collateral attacks on the conviction itself, not the sentence. *State v. Sims*, 294 Kan. 821, 825, 280 P.3d 780 (2012); see also *State v. Trotter*, 296 Kan. 898, 904, 295 P.3d 1039 (2013) ("To overturn the sentence because of a defect in the complaint, Trotter must obtain a reversal of his conviction, and a motion to correct an illegal sentence cannot be used as a vehicle for a collateral attack on a conviction."); *Robertson*, 309 Kan. 602, Syl. ¶ 1 (following *Trotter*); *Ross*, 315 Kan. 804, Syl. ¶ 2 (following *Robertson*).

To be sure, this court has recognized instances when both a conviction and sentence can be challenged through a motion under K.S.A. 22-3504, but those have never

been in the context of claimed deficiencies in the complaint. For example, in *State v. Davis*, 281 Kan. 169, 130 P.3d 69 (2006), the court reversed both when the defendant argued a district court's failure to conduct a competency evaluation deprived it of jurisdiction to conduct a sentencing—and all other phases of the prosecution—because state law mandated proceedings must be suspended once counsel requests the evaluation and the court finds reason to believe the defendant is incompetent. Similarly, in *State v. Breedlove*, 285 Kan. 1006, 179 P.3d 1115 (2008), a motion to correct illegal sentence led to reversal of a juvenile defendant's convictions and vacating of his sentences because the State failed to first begin juvenile proceedings before trying him as an adult. 285 Kan. at 1016-17.

But these examples are not collateral attacks on the underlying conviction disguised as challenges to the resulting sentence as we have here. We hold Deck's motion to correct an illegal sentence under K.S.A. 22-3504 falls into the collateral attack category long recognized as inappropriate for this statutory procedure. We affirm the lower courts on the issue subject to our review.

Affirmed.

* * *

BILES, J., concurring: I concur in the result but write separately to suggest a better rationale. In Deck's case, we must decide whether the district court had subject matter jurisdiction to sentence him for attempted unintentional second-degree murder, which our precedent has already labeled a "logically impossible" crime in another context. *State v. Shannon*, 258 Kan. 425, 428-29, 905 P.2d 649 (1995); see also *State v. Gentry*, 310 Kan. 715, 732, 449 P.3d 429 (2019) (reaffirming *Shannon*; reasoning it "is a logical impossibility—a person cannot intend to kill while not intending to kill").

In *State v. Dunn*, 304 Kan. 773, 375 P.3d 332 (2016), the court held that for a charging document to be statutorily sufficient, it

> "need only show that a case has been filed in the correct court, *e.g.*, the district court rather than municipal court; show that the court has territorial jurisdiction over the crime alleged; and *allege facts that, if proved beyond a reasonable doubt, would constitute a Kansas crime committed by the defendant*." (Emphasis added.) 304 Kan. at 811.

Deck presents a straightforward question asking whether the State's complaint satisfied *Dunn*'s third requirement. In other words, we just need to decide whether the charging document alleged facts constituting "a Kansas crime committed by the defendant" as the italicized language in *Dunn* reflects. And I believe it did.

K.S.A. 22-3201(b) reads: "The complaint, information or indictment shall be a plain and concise written statement of the *essential facts constituting the crime* charged, which complaint, information or indictment, drawn in the language of the statute, shall be deemed sufficient." (Emphasis added.) The same subsection provides that a charging document "shall state for each count the official or customary citation of the statute . . . which the defendant is alleged to have violated," and even if "[e]rror in the citation or its omission" occurs, such an error or omission "shall be not ground for dismissal of [the prosecution] or for reversal of a conviction if the error or omission did not prejudice the defendant." K.S.A. 22-3201(b). And subsection (e) allows a court to "permit a complaint or information to be amended at any time before verdict or finding if no additional or different crime is charged and if substantial rights of the defendant are not prejudiced." K.S.A. 22-3201(e).

As the *Dunn* court reasoned, "K.S.A. 22-3201 indicate[s] that a court is not automatically deprived of subject matter jurisdiction by a defect in a charging document." *Dunn*, 304 Kan. at 791. And it explained the statute "allows a prosecution to be continued in spite of an error or omission in the required citation to the provision of law alleged to be violated, unless a defendant has suffered prejudice." 304 Kan. at 791.

Deck argues the State's charge of attempted unintentional second-degree murder fails to satisfy *Dunn*'s third requirement since it did not allege a recognized crime in Kansas. He relies on *Shannon* and *Gentry*, but those cases dealt with a court's statutory obligation to give lesser included offense instructions. See K.S.A. 2022 Supp. 22-3414(3) (requiring courts to instruct when there is some evidence reasonably justifying a conviction of some lesser included crime as provided by K.S.A. 21-5109[b]). And unlike *Shannon* and *Gentry*, the question is whether *charging* such a crime as was done here deprived the district court of subject matter jurisdiction over the crime he ultimately pled to.

Deck repeatedly characterizes count four as a nonexistent crime, but its constituent elements really do exist within the Kansas Criminal Code. Starting with K.S.A. 2022 Supp. 21-5301(a), it defines "attempt" as "any overt act toward the perpetration of a crime done by a person who intends to commit such crime but fails in the perpetration thereof or is prevented or intercepted in executing such crime." And K.S.A. 2022 Supp. 21-5403(a)(2) defines "[m]urder in the second degree" as "the killing of a human being committed . . . unintentionally but recklessly under circumstances manifesting extreme indifference to the value of human life." Both the attempt crime and the unintentional second-degree murder crime reside in state law, so the facts recited in count four alleging attempted unintentional second-degree murder constitute criminal behavior violating our criminal code.

Granted, one logically cannot commit an attempted unintentional killing, but the governing statute for criminal complaints merely requires alleging *a* crime's essential facts. K.S.A. 22-3201; see K.S.A. 2022 Supp. 22-2202(i); *Dunn*, 304 Kan. at 790. And while this may seem counterintuitive, the question as Deck has framed it is not his conviction's validity—it is simply whether the district court had the judicial power to hear and decide a particular type of action, which here is a criminal proceeding. I would hold the answer is yes in this case.

As *Dunn* clarifies: "Kansas charging documents do not bestow or confer subject matter jurisdiction on state courts to adjudicate criminal cases; the Kansas Constitution does." *Dunn*, 304 Kan. 773, Syl. ¶ 1. A charging document simply needs to: (1) show the case was filed in the correct court, e.g., a district court rather than a municipal court; (2) show the court has territorial jurisdiction over the crime alleged; and (3) allege facts that, if proved beyond a reasonable doubt, would constitute a Kansas crime committed by the defendant. 304 Kan. 773, Syl. ¶ 2; see K.S.A. 22-3201. Here, the State made a statutorily sufficient showing by charging Deck with facts constituting the crime of unintentional second-degree murder and the crime of attempt. His global plea agreement, which resolved several charges in two separate criminal cases, came later and is unaffected by the *Shannon* line of cases about lesser included offense instructions.

As the *Dunn* court explained,

> "Because all crimes are statutorily defined, this is a statute-informed inquiry. The legislature's definition of the crime charged must be compared to the State's factual allegations of the defendant's intention and action. If those factual allegations, proved beyond a reasonable doubt, would justify a verdict of guilty, then the charging document is statutorily sufficient. If the charging document is instead statutorily insufficient, then the State has failed to properly *invoke* the subject matter jurisdiction of the court, and an appropriate remedy must be fashioned. The problem is not a substantive absence of

> jurisdiction; it is a procedural failure to demonstrate its existence. The availability of a remedy is key. Statutory infirmity does not inevitably fail to bestow subject matter jurisdiction or deprive the court of jurisdiction or destroy jurisdiction. See K.S.A. 22-3502 (arrest of judgment available if charging document does not charge crime *or* court without jurisdiction)." *Dunn*, 304 Kan. at 812.

Unlike my colleagues, I would not reject Deck's challenge as procedurally infirm under K.S.A. 2022 Supp. 22-3504. After all, subsection (c)(1) defines an "illegal sentence" as one "[i]mposed by a court without jurisdiction." That is what he claims, and he tailored his motion to just that question and made its target his sentence. I would hold the problem for Deck is not his procedural vehicle, but the facts stated in count four. Those facts satisfy *Dunn*'s third requirement, so the district court had subject matter jurisdiction.

WILSON, J., joins the foregoing concurring opinion.