

NOT DESIGNATED FOR PUBLICATION

No. 124,586

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

KENDRALL DAVON RANSOM,  
*Appellant,*

v.

STATE OF KANSAS,  
*Appellee.*

MEMORANDUM OPINION

Appeal from Sedgwick District Court; WILLIAM S. WOOLLEY, judge. Opinion filed May 26, 2023. Affirmed.

*Sam S. Kepfield*, of Hutchinson, for appellant.

*Julie A. Koon*, assistant district attorney, *Marc Bennett*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before WARNER, P.J., COBLE and PICKERING, JJ.

PER CURIAM: Kendall Ransom appeals the district court's summary denial of his third K.S.A. 60-1507 motion, arguing that the district court erred when it found his motion was untimely and successive. After reviewing the parties' arguments and the record, we agree with the district court that Ransom's motion was filed outside the time frame permitted by K.S.A. 60-1507. And although Kansas law allows a court to extend K.S.A. 60-1507's deadline to prevent manifest injustice, Ransom provides no circumstance that would explain or excuse his delay in filing. We thus affirm the district court's decision.

## FACTUAL AND PROCEDURAL BACKGROUND

In 2007, a jury found Ransom guilty of two counts each of first-degree felony murder and attempted aggravated robbery. The district court sentenced him to two consecutive hard 20 life sentences for the felony-murder convictions and an additional consecutive 68 months' imprisonment for the attempted aggravated robbery convictions. The facts giving rise to Ransom's convictions stemmed from a plan to rob a drug house in Wichita in March 2006. The Kansas Supreme Court affirmed Ransom's convictions on direct appeal in May 2009. *State v. Ransom*, 288 Kan. 697, 700-03, 207 P.3d 208 (2009). The appellate mandate issued the following month.

Ransom filed his first request for relief under K.S.A. 60-1507 in 2010, shortly after his direct appeal concluded. The district court appointed counsel to represent Ransom and held a preliminary hearing to better understand his claims. After determining that Ransom's claims needed no further development, the court denied his motion without an evidentiary hearing. This court affirmed the district court's decision. *Ransom v. State*, No. 105,042, 2011 WL 6382886, at \*1 (Kan. App. 2011) (unpublished opinion), *rev. denied* 296 Kan. 1131 (2013).

In 2013, Ransom filed his second K.S.A. 60-1507 motion, raising several challenges relating to his trial, as well as claims that he received ineffective assistance of counsel at trial, during his direct appeal, and during his first K.S.A. 60-1507 motion. The district court summarily denied Ransom's motion because it was filed outside the one-year time frame permitted by Kansas law and Ransom had not shown that manifest injustice would result if the court did not consider the untimely motion. This court affirmed the district court's judgment, finding that Ransom's claim regarding his attorney's actions during his first K.S.A. 60-1507 motion lacked merit and failed to

excuse his untimely filing. *Ransom v. State*, No. 118,667, 2018 WL 6424286, at \*1-2 (Kan. App. 2018) (unpublished opinion), *rev. denied* 310 Kan. 1063 (2019).

Ransom filed his third K.S.A. 60-1507 motion—the motion that is the subject of this appeal—in 2021. He asserted that his trial and direct-appeal attorneys were ineffective for failing to challenge the legality of the search of the house of one of the other people involved in the incident. Ransom asserted that the jury would not have convicted him if his trial attorney had succeeded in suppressing or excluding the evidence found during that search.

The district court found Ransom's third K.S.A. 60-1507 motion was untimely and successive, and thus it denied the motion without appointing counsel or holding an evidentiary hearing:

- The court noted that the mandate for Ransom's direct appeal was issued in 2009, and Ransom filed his latest K.S.A. 60-1507 motion in 2021. And the court found that Ransom presented no reasons to excuse his untimeliness.
- The court found that Ransom's latest K.S.A. 60-1507 motion was successive because "Ransom is alleging the same facts and issues in each [K.S.A. 60-1507 motion], that is, the alleged failure to raise the issue of the constitutionality of law enforcement's search of Sharondi Washington's home, the suppression of any evidence found, and the suppression of her testimony." And it found that Ransom offered no exceptional circumstances that prevented him from raising his claims before.

Ransom appeals the district court's ruling.

## DISCUSSION

This court has unlimited review over a K.S.A. 60-1507 motion that was dismissed or denied without an evidentiary hearing. *Bellamy v. State*, 285 Kan. 346, 354, 172 P.3d 10 (2007). This is because an appellate court is in the same position as the district court to determine whether "the motion and the files and records of the case conclusively show that [Ransom] is entitled to no relief." K.S.A. 2022 Supp. 60-1507(b); see *Beauclair v. State*, 308 Kan. 284, 293, 419 P.3d 1180 (2018).

Through K.S.A. 60-1507, our legislature provides incarcerated people with a right to seek habeas corpus relief, but places certain limitations on doing so to avoid abuse of remedy. *Manco v. State*, 51 Kan. App. 2d 733, 741, 354 P.3d 551 (2015) (finding that K.S.A. 60-1507's provisions about successive motions and filing deadlines are reasonable, constitutional procedural limitations), *rev. denied* 304 Kan. 1017 (2016).

The limitation central to our discussion of Ransom's appeal is the deadline to file a K.S.A. 60-1507 motion. Kansas law requires a person to bring a motion under K.S.A. 60-1507 within one year of the final appellate mandate in his or her direct appeal. See K.S.A. 2022 Supp. 60-1507(f); Supreme Court Rule 183(c)(4) (2023 Kan. S. Ct. R. at 243). A court must dismiss a motion as untimely if, "upon its own inspection of the motions, files and records of the case, [it] determines the time limitations under this section have been exceeded and that the dismissal of the motion would not equate with manifest injustice." K.S.A. 2022 Supp. 60-1507(f)(3).

As this statutory language indicates, the one-year period under K.S.A. 60-1507 may be extended only to prevent a manifest injustice. See K.S.A. 2022 Supp. 60-1507(f)(2). This exception is a narrow one. K.S.A. 2022 Supp. 60-1507(f)(2)(A) limits the scope of "manifest injustice" to two considerations—whether the movant has

explained why he or she "failed to file the motion within the one-year time limitation" and whether the person "makes a colorable claim of actual innocence."

No one disputes that Ransom's third K.S.A. 60-1507 motion was untimely. Ransom filed his motion in August 2021—more than 12 years after the decision and mandate affirming his convictions on direct appeal. This is well outside the one-year time limitation provided in K.S.A. 2022 Supp. 60-1507(f). Thus, Ransom has the burden to show that consideration of his untimely motion is warranted under one of the considerations in K.S.A. 2022 Supp. 60-1507(f). See *White v. State*, 308 Kan. 491, 496, 421 P.3d 718 (2018). If he does not demonstrate manifest injustice under either of these definitions, Kansas law requires the courts to dismiss his motion. K.S.A. 2022 Supp. 60-1507(f)(3). Ransom has not shown that either consideration applies here.

*First*, Ransom has offered no reasons, before the district court or on appeal, why he brought his most recent K.S.A. 60-1507 motion more than a decade after the one-year time frame in K.S.A. 2022 Supp. 60-1507(f) expired. Instead, he challenges the time frame itself—asserting that statutory time limitations on habeas corpus motions are "artificial barriers" that "go against the spirit of the original Habeas Corpus document, the *Magna Carta*." But the constitutionality of the procedural limitations placed on K.S.A. 60-1507 motions is firmly established, and Ransom gives us no cause to revisit that question. See *Manco*, 51 Kan. App. 2d at 740-41. And more fundamentally, Ransom's argument does not provide any explanation for his delay; it merely—albeit unsuccessfully—attempts to argue that the one-year limitation in K.S.A. 2022 Supp. 60-1507(f)(1) should not apply.

*Second*, Ransom has not shown that new evidence of his innocence warrants consideration of his untimely motion. While Ransom's latest K.S.A. 60-1507 motion claims that he is actually innocent—based on his assertion that he would have been acquitted if not for his trial and direct-appeal attorneys' failures to challenge the

admission of firearms found during the search of the house—this argument does not provide a procedural avenue under Kansas law to excuse his untimely filing.

For an innocence claim to warrant extending the filing deadline for a K.S.A. 60-1507 motion, a movant must show that "it is more likely than not that no reasonable juror would have convicted the prisoner *in light of new evidence*." (Emphasis added.) K.S.A. 2022 Supp. 60-1507(f)(2). In the context of an ineffective-assistance-of-counsel claim, new evidence can include evidence available but not presented at trial or exculpatory evidence an attorney failed to discover or present to the jury showing actual innocence. *Skaggs v. State*, 59 Kan. App. 2d 121, Syl. ¶ 7, 479 P.3d 499 (2020), *rev. denied* 313 Kan. 1042 (2021).

Ransom points to no new evidence supporting his claims. See *Beauclair*, 308 Kan. at 299 (to be credible, an innocence claim must be supported with some new evidence not presented at trial—whether it be scientific, eyewitness accounts, or physical evidence). Rather, he argues that evidence that was known, and introduced, should have been excluded, and this may have changed the outcome of his case. In other words, he does not allege any new evidence that would permit a court to consider an otherwise untimely filing under K.S.A. 2022 Supp. 60-1507(f)(2).

We thus agree with the district court that Ransom's claims in his third K.S.A. 60-1507 motion were untimely. As such, K.S.A. 2022 Supp. 60-1507(f)(3) required that the claims be dismissed. We affirm the district court's decision summarily denying Ransom's motion.

As a final note, we observe that the district court also found Ransom's claims in his current K.S.A. 60-1507 motion were successive, as he could have brought them in either of the two K.S.A. 60-1507 motions he has filed before. Unlike timeliness, which is a statutory prerequisite to consideration of a K.S.A. 60-1507 motion, a district court has

discretion whether to consider successive filings. See K.S.A. 2022 Supp. 60-1507(c) (stating that a court is "not . . . required to entertain a second or successive motion for similar relief" filed by the same person). Because we have already determined that Ransom's third K.S.A. 60-1507 motion was untimely, and affirm the court's decision on that ground, we need not consider whether it was also successive.

The district court did not err when it summarily denied Ransom's untimely K.S.A. 60-1507 motion.

Affirmed.