

NOT DESIGNATED FOR PUBLICATION

No. 125,143

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

LEON STEVE HUBER JR.,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Leavenworth District Court; GERALD R. KUCKELMAN, judge. Opinion filed March 3, 2023. Affirmed.

Submitted by the parties for summary disposition pursuant to K.S.A. 2022 Supp. 21-6820(g) and (h).

Before ARNOLD-BURGER, C.J., BRUNS and ISHERWOOD, JJ.

PER CURIAM: Leon Steve Huber Jr. appeals the district court's refusal to grant his request for a dispositional departure and award him probation. We granted Huber's motion for summary disposition pursuant to Supreme Court Rule 7.041A (2022 Kan. S. Ct. R. at 48). The State did not contest the motion. Following a review of the record, we affirm.

Pursuant to an agreement, Huber pleaded guilty to a single count of criminal deprivation of property, in violation of K.S.A. 2021 Supp. 21-5803(a) and (b)(1)(A)(i). In exchange for his plea, the parties agreed to recommend a two-year probation term. That agreement also seemingly contemplated Huber's plea of guilty to possession of a

controlled substance in an unrelated case not subject to this appeal. The parties also agreed to recommend a departure to probation in that case so Huber could avail himself of drug treatment.

The district court accepted Huber's plea and at sentencing, the parties requested that the judge follow their sentencing recommendation. The court declined to find that substantial and compelling reasons existed to support a departure to probation and imposed concurrent, one-year sentences for each case.

Huber appeals the district court's denial of his request. He contends the court erred when it failed to follow the recommendation of the parties and instead found a one-year jail term the more appropriate sentence for his offense.

Huber's criminal deprivation of property conviction is a class A misdemeanor. See K.S.A. 2021 Supp. 21-5803(b)(1)(A)(i). Because the limitations set forth under K.S.A. 2021 Supp. 21-6820(c) apply only to felony sentences, we have jurisdiction to review Huber's misdemeanor sentence. See *State v. Huff*, 277 Kan. 195, 197-98, 83 P.3d 206 (2004) (presumptive felony sentence statute inapplicable to misdemeanor sentences).

A criminal sentence within statutory limits will not be disturbed on appeal absent a showing of an abuse of discretion on the part of the sentencing court. *State v. Brown*, 309 Kan. 369, 375, 435 P.3d 546 (2019). A district court abuses its discretion when: (1) no reasonable person would take the view adopted by the judge, (2) a ruling stems from an error of law, or (3) substantial competent evidence does not support a finding of fact on which the exercise of discretion is based. The burden of proving error is on the party alleging the abuse. *State v. McLinn*, 307 Kan. 307, 347-48, 409 P.3d 1 (2018).

Huber's 12-month sentence for misdemeanor criminal deprivation of property falls within the statutory limits. See K.S.A. 2021 Supp. 21-6602(a)(1) (setting maximum

sentence for class A misdemeanors to one year). He objects to the district court's failure to follow the parties' sentencing recommendation for probation, but that is not a disposition to which he is entitled. See *State v. Beck*, 307 Kan. 108, 110, 406 P.3d 377 (2017) ("[I]n Kansas both parties to a plea agreement assume the risk the sentencing court will impose a sentence different than the sentence recommended as part of the plea agreement because sentence recommendations made pursuant to a plea bargain are not binding on the trial court.' [Citation omitted.]"). Despite Huber's merely conclusory contention to the contrary, his 12-month jail term is not erroneous given that it corresponds with the statutorily provided for sentence.

Granting probation in this case also posed another complication because when the court sentenced Huber for criminal deprivation of property, it simultaneously ordered him to serve one year in prison for his conviction of possession of a controlled substance in the unrelated case, refusing a departure to probation. This court has held it may be "impractical and unworkable to place" a defendant on probation in one case while imprisonment is required in another case. *State v. Benoit*, 31 Kan. App. 2d 591, 595, 97 P.3d 497 (2003). The *Benoit* panel reasoned that such disposition of multiple cases makes the defendant "not amenable to probation." 31 Kan. App. 2d at 595. Huber's sentences in his two cases were ordered to be served concurrently. Such disposition makes Huber unamenable to probation for the reason previously identified in *Benoit*.

Huber has not shown the district court erred or otherwise abused its discretion when it refused his request for a departure to probation.

Affirmed.