

NOT DESIGNATED FOR PUBLICATION

No. 125,158

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

SCHINA T. GANTT,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; DAVID J. KAUFMAN, judge. Opinion filed April 21, 2023.
Affirmed.

Sam S. Kepfeld, of Hutchinson, for appellant, and *Schina T. Gantt*, appellant pro se.

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

Before CLINE, P.J., MALONE and ATCHESON, JJ.

PER CURIAM: Schina T. Gantt appeals the district court's summary denial of his second K.S.A. 60-1507 motion. Because the district court correctly found Gantt's motion successive and he has failed to show exceptional circumstances which would allow us to consider it, we affirm.

In January 2014, a jury convicted Gantt of aggravated robbery and attempted murder in the first degree. A few months later, the district court sentenced him to 272

months' imprisonment. Gantt appealed, and in August 2015, we affirmed his convictions. *State v. Gantt*, No. 111,601, 2015 WL 5009868 (Kan. App. 2015) (unpublished opinion).

In June 2016, Gantt filed a K.S.A. 60-1507 motion asserting several claims. *Gantt v. State*, No. 119,990, 2019 WL 5090342, at *1 (Kan. App. 2019) (unpublished opinion). The district court dismissed the motion after an evidentiary hearing, and we affirmed this decision on appeal. 2019 WL 5090342, at *5-6.

In December 2021, Gantt filed a pro se "Writ of Habeas Corpus Manifest [Injustice]" alleging the State violated his due process rights by using testimony from a victim who was not competent to testify. The district court construed this motion as a K.S.A. 60-1507 motion and summarily denied it as "successive and without merit procedurally." The district court noted that Gantt was "afforded the full range of legal rights in his post-direct appeal pleadings," and that he could not "resurrect and relitigate the same issue or raise a new issue which should have been previously addressed in either his direct appeal from his underlying conviction or his first" motion. It also stated that Gantt "is not allowed under the law to continue filing [motions] when very narrow exceptions to a second filing are not applicable to this filing nor asserted by" Gantt.

Gantt timely appeals.

Gantt claims he established that an evidentiary hearing was warranted for his second K.S.A. 60-1507 motion, so the district court erred by summarily denying it. We disagree.

A district court has three options when handling a K.S.A. 60-1507 motion:

"(1) The court may determine that the motion, files, and case records conclusively show the prisoner is entitled to no relief and deny the motion summarily; (2)

the court may determine from the motion, files, and records that a potentially substantial issue exists, in which case a preliminary hearing may be held. If the court then determines there is no substantial issue, the court may deny the motion; or (3) the court may determine from the motion, files, records, or preliminary hearing that a substantial issue is presented requiring a full hearing.' [Citations omitted.]" *State v. Adams*, 311 Kan. 569, 578, 465 P.3d 176 (2020).

The standard of review depends on which of these options a district court used. 311 Kan. at 578. When the district court summarily denies a K.S.A. 60-1507 motion, as it did here, an appellate court conducts a de novo review to determine whether the motion, files, and records of the case conclusively establish that the movant is not entitled to relief. *Beauclair v. State*, 308 Kan. 284, 293, 419 P.3d 1180 (2018).

We look first at the successive nature of Gantt's K.S.A. 60-1507 motion. Under K.S.A. 60-1507(c), a sentencing court need not entertain a second or successive motion for similar relief on behalf of the same prisoner. 308 Kan. at 304; see Supreme Court Rule 183(d) (2023 Kan. S. Ct. R. at 243). "A movant in a K.S.A. 60-1507 motion is presumed to have listed all grounds for relief, and a subsequent motion need not be considered in the absence of a showing of circumstances justifying the original failure to list a ground." *State v. Trotter*, 296 Kan. 898, Syl. ¶ 2, 295 P.3d 1039 (2013).

As noted above, the district court construed Gantt's pro se "Writ of Habeas Corpus Manifest [Injustice]" as a second K.S.A. 60-1507 motion. Gantt does not disagree with this construction and, indeed, on appeal he characterizes it the same way. He also admits an evidentiary hearing is not warranted if a K.S.A. 60-1507 motion is successive.

While Gantt admits this was his second 60-1507 motion, he claims he was entitled to a hearing because he raised a different issue this time. He argues the district court erred by stating that Gantt was reasserting the same issue he had previously raised about the victim's competency. Gantt asserts that he argued before that he was effectively denied

his Sixth Amendment right to confront witnesses against him because the victim could not remember at trial what he told law enforcement on the day of the attack. He says his second 60-1507 motion was not successive because it raised a new issue—that the victim's statements to police were given under conditions that rendered them inherently unreliable—that is, the victim was high on crack when he gave those statements.

But Gantt's argument is beside the point. Even if we agree that he is now arguing a different issue, he fails to address the district court's finding that he should have addressed the issue he now raises either in his direct appeal or in his first K.S.A. 60-1507 motion. As a result, we find no error in the court's determination that Gantt's motion was successive on this basis.

Gantt also provides no basis for us to find an exception to this general bar on successive 60-1507 motions. To avoid a dismissal of a second or successive K.S.A. 60-1507 motion, the movant bears the burden of establishing exceptional circumstances. Exceptional circumstances are unusual events or intervening changes in the law that prevented the defendant from raising the issue in a prior K.S.A. 60-1507 motion. *Beauclair*, 308 Kan. at 304. Gantt does not assert any such circumstances existed here, nor does he provide any reason why he failed to raise this issue before now.

For these reasons, we affirm the district court's summary denial of Gantt's second K.S.A. 60-1507 motion.

Affirmed.