

NOT DESIGNATED FOR PUBLICATION

No. 125,411

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

ERNEST FRANKLIN GAUGER JR.,
Appellant.

MEMORANDUM OPINION

Appeal from Leavenworth District Court; GERALD R. KUCKELMAN, judge. Opinion filed March 31, 2023. Affirmed.

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

Before GREEN, P.J., HILL and COBLE, JJ.

PER CURIAM: Ernest Franklin Gauger Jr. appeals his sentence. He asserts that the district court erred by failing to follow the sentencing recommendation in his plea agreement. We granted his motion for summary disposition under Supreme Court Rule 7.041A (2022 Kan. S. Ct. R. at 48). We find no error, and we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The State charged Gauger with possession of marijuana and possession of drug paraphernalia, both misdemeanors. Gauger pled guilty to possession of drug paraphernalia and, in exchange for Gauger's guilty plea, the State dismissed the charge of

possession of marijuana. As part of the plea agreement, the parties recommended that the court sentence Gauger to six months in jail but suspend his jail sentence and order six months' unsupervised probation and no fines. At Gauger's plea hearing, the judge explained to Gauger that the court was not a party to the plea negotiations and not bound by the plea agreement. Gauger said he understood.

At sentencing, the court noted that Gauger failed to appear for his presentence interview, which had been scheduled several times, including by phone. The district court sentenced Gauger to six months in jail, suspended the jail sentence, and ordered one year of supervised probation. The court did not follow the parties' recommendations of six months' unsupervised probation.

In this appeal, Gauger argues the sentencing court erred in imposing a six-month jail term for his conviction of possession of drug paraphernalia—a class B misdemeanor. See K.S.A. 2017 Supp. 21-6602(a)(2).

A criminal sentence within statutory limits will not be disturbed on appeal absent a showing of abuse of discretion or vindictiveness on the part of the sentencing court. *State v. Cooper*, 275 Kan. 823, 827, 69 P.3d 559 (2003). The maximum sentence for a class B misdemeanor must not exceed six months in county jail. K.S.A. 2022 Supp. 21-6602(a)(2).

We will not disturb Gauger's criminal sentence as it was within statutory limits, and the record does not reflect an abuse of discretion or vindictiveness on the part of the sentencing court.

Gauger also argues the district court erred in failing to follow the terms of the plea agreement and ordering one year of supervised probation instead of six months of unsupervised probation. But the district court was not bound by the terms of the plea

agreement and had the discretion to order supervised probation. See *State v. Boley*, 279 Kan. 989, 993, 113 P.3d 248 (2005). We find no error and affirm.

Affirmed.