

NOT DESIGNATED FOR PUBLICATION

Nos. 125,530
125,531

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

JAMES LEROY SPICER,
Appellant.

MEMORANDUM OPINION

Appeal from Brown District Court; JOHN L. WEINGART, judge. Opinion filed March 24, 2023.
Affirmed in part and dismissed in part.

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

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

PER CURIAM: James Leroy Spicer appeals his sentences for felony fleeing or attempting to elude a police officer and misdemeanor driving with a suspended license. We have jurisdiction to review Spicer's misdemeanor sentence but not the felony sentences. We granted Spicer's unopposed motion for summary disposition under Kansas Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). After a review of the record, we conclude that the district court did not abuse its discretion and affirm in part and dismiss in part.

Spicer pleaded no contest to two counts of fleeing or attempting to elude a police officer, a severity level 9 person felony, and one count of driving with a suspended

license, a class B misdemeanor, under a joint plea agreement with the State. This plea agreement disposed of the charges brought against Spicer in three separate criminal cases.

The district court sentenced Spicer to 12 months' probation, with an underlying sentence of 12 months' imprisonment for each of the counts of fleeing or attempting to elude and 6 months in county jail for driving with a suspended license. This was the standard presumptive sentence for these crimes under the Kansas Sentencing Guidelines, given Spicer's criminal history of C.

Spicer now timely appeals.

On appeal, Spicer argues that the district court erred in imposing a probationary term of 12 months, as it had discretion under K.S.A. 2022 Supp. 21-6608(c)(3) to impose a shorter term of probation. Nevertheless, as he acknowledges in his motion for summary disposition, while the district court had discretion to sentence him differently, the felony sentences he received were nonetheless within the presumptive range for his crimes. This means that we have only jurisdiction to review his misdemeanor sentence. See K.S.A. 2022 Supp. 21-6820(c)(1) (On appeal from a felony conviction, appellate courts shall not review any sentence that is within the presumptive sentence for the crime.). We dismiss the part of Spicer's appeal regarding his presumptive felony sentences.

A sentence for driving while suspended is governed by K.S.A. 8-262, rather than under the revised Kansas Sentencing Guidelines Act, K.S.A. 2022 Supp. 21-6801 et seq. Nongrid sentences imposed within the statutory guidelines are not to be disturbed on appeal absent a showing of 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 an abuse of discretion is on the party alleging the abuse. *State v. McLinn*, 307 Kan. 307, 347-48, 409 P.3d 1 (2018).

Spicer argues that the district court abused its discretion in not imposing a shorter probation term because he had been doing well on pretrial release up to that point. But since a reasonable person could agree with the sentence imposed by the district court and Spicer has not shown that this sentence was otherwise unlawfully imposed, he has failed to show that the district court abused its discretion. Thus, we affirm his misdemeanor sentence.

Affirmed in part and dismissed in part.