

NOT DESIGNATED FOR PUBLICATION

No. 125,546

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

LAWONNA R. HILL-COBBINS,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; ERIC WILLIAMS, judge. Opinion filed March 17, 2023.
Affirmed.

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: Lawonna R. Hill-Cobbins appeals the district court's denial of her request for a dispositional departure to probation. We granted Hill-Cobbins' motion for summary disposition under Kansas Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). The State's response agreed that summary disposition is appropriate. Finding no error, we affirm.

On August 20, 2017, Wichita police responded to a call from Charity Blackman saying that her boyfriend, Dorzee Hill, possessed two firearms in violation of his parole. When police arrived, they found no firearms. Blackman claimed that Hill gave one of the guns to his mother, Hill-Cobbins, who lived next door. Police executed a search warrant on Hill-Cobbins' house, finding several drugs and \$2,923 in cash. The State charged Hill-

Cobbins with possessing more than 100 grams of methamphetamine, in violation of K.S.A. 2017 Supp. 21-5705(a)(1); possessing between 3.5 and 100 grams of heroin, in violation of K.S.A. 2017 Supp. 21-5705(a)(1); possessing between 10 and 100 dosage units of methamphetamine, in violation of K.S.A. 2017 Supp. 21-5705(a)(1); possessing between 3.5 and 100 grams of cocaine, in violation of K.S.A. 2017 Supp. 21-5705(a)(1); and possessing between 25 and 450 grams of marijuana, in violation of K.S.A. 2017 Supp. 21-5705(a)(4).

Hill-Cobbins pleaded no contest to possession of methamphetamine with the intent to distribute within 1,000 feet of a school, in violation of K.S.A. 2017 Supp. 21-5705(a)(1) and (d)(5). Under a plea agreement, the parties agreed to seek a durational departure to 98 months (8 years, 2 months) in prison, leaving a dispositional departure to probation open to argue. Hill-Cobbins moved for a dispositional departure to probation.

At sentencing, the district court denied Hill-Cobbins' motion for dispositional departure but followed the plea agreement's recommendation for a durational departure. Hill-Cobbins appeals.

The revised Kansas Sentencing Guidelines Act (KSGA), K.S.A. 2022 Supp. 21-6801 et seq., governs when a defendant may appeal his or her sentence. The KSGA provides that departure sentences are "subject to appeal by the defendant or the state." K.S.A. 2022 Supp. 21-6820(a). The statute defines "'departure'" as "a sentence which is inconsistent with the presumptive sentence for an offender." K.S.A. 2022 Supp. 21-6803(f).

We have jurisdiction to review Hill-Cobbins' sentence because the district court imposed a durational departure. Also, the court denied her dispositional departure motion to probation. See *State v. Looney*, 299 Kan. 903, 909, 327 P.3d 425 (2014) (finding that a

defendant may appeal from a district court's denial of a motion for dispositional departure to probation).

We review the extent of a departure for an abuse of discretion. *State v. Trevino*, 290 Kan. 317, 322, 227 P.3d 951 (2010). A judicial action constitutes an abuse of discretion if (1) it is arbitrary, fanciful, or unreasonable; (2) it is based on an error of law; or (3) it is based on an error of fact. *State v. Levy*, 313 Kan. 232, 237, 485 P.3d 605 (2021).

Hill-Cobbins alleges no error of either fact or law. Thus, she must show that no reasonable person would agree with the district court's decision to deny her request for a dispositional departure to probation. See *State v. Ibarra*, 307 Kan. 431, 433-44, 411 P.3d 318 (2018) (holding that a district court abuses its discretion in denying a departure motion by relying on an error of fact or law or if no reasonable person would agree with its decision).

Hill-Cobbins asserts that the district court abused its discretion by not granting probation because her criminal history stems from long ago and because she has severe health issues that could be better treated outside of prison. At sentencing, Hill-Cobbins argued that she had significant health problems at age 63 and prison facilities would be inadequate for her care. Specifically, her counsel argued, "I mean, we're talking about eight or nine years in prison. And for her, that's literally a death sentence." Hill-Cobbins explained that the oxygen mask she was wearing during the hearing was required all day, including when she sleeps, and that her heart problems may lead to a transplant or a valve replacement. Although she mentioned chronic obstructive pulmonary disease (COPD), her argument to the district court focused on her heart. "And I see the doctor once a month. I see the heart doctor. . . . I have four stents in my heart. The doctor told me he's not going to give me another stent. I need open-heart surgery."

Hill-Cobbins also argued that the age of her criminal history counts as a factor, citing *State v. Richardson*, 20 Kan. App. 2d 932, 901 P.2d 1 (1995). In *Richardson*, the defendant's last felony was 10 years old and the last person felony was 14 years old. We affirmed the sentencing court's finding that the age of these convictions was a substantial and compelling reason to depart from the presumptive sentence. 20 Kan. App. 2d at 943.

Hill-Cobbins noted that she had a criminal history score of D, but that score was based on a person felony committed in 1986, 34 years earlier. Her most recent conviction was a driving while suspended charge roughly 10 years earlier. Hill-Cobbins pleaded no contest to a severity level 2 drug crime, with a sentencing range of 92-144 months in prison. With a criminal history of D, the mid-box sentence for Hill-Cobbins would be 117 months (9 years, 9 months) in prison. K.S.A. 2017 Supp. 21-6805(a). But under her plea agreement, Hill-Cobbins would receive 98 months (8 years, 2 months) in prison, which would be the mid-box sentence if Hill-Cobbins had no criminal history. K.S.A. 2017 Supp. 21-6805(a).

Thus, Hill-Cobbins' argument about her criminal history fails. The sentence she received is the same as if she had no criminal history, making the age of her previous convictions irrelevant. And Hill-Cobbins' argument about her health also fails. As the district court stated twice at sentencing, Hill-Cobbins had those health issues when she committed her crime of conviction. Her poor health did not prevent her from committing a presumptive prison severity level 2 drug felony. On appeal, she must show that no reasonable person would agree with the district court's decision to deny her request to depart from a prison sentence to probation. Hill-Cobbins fails to meet this burden.

For the preceding reasons, we affirm the district court's decision under Supreme Court Rule 7.042(b)(2) (2023 Kan. S. Ct. R. at 49).

Affirmed.