

NOT DESIGNATED FOR PUBLICATION

No. 125,638

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STEVEN WADE EDWARDS II,  
*Appellant,*

v.

STATE OF KANSAS,  
*Appellee.*

MEMORANDUM OPINION

Appeal from Sedgwick District Court; JEFFREY E. GOERING, judge. Submitted without oral argument. Opinion filed December 8, 2023. Affirmed.

*Kristen B. Patty*, of Wichita, for appellant.

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

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

PER CURIAM: Steven Wade Edwards II appeals the district court's denial of his K.S.A. 60-1507 motion alleging ineffective assistance of counsel. Edwards claims the district court erred in not holding an evidentiary hearing on his motion. For reasons explained below, we affirm the district court's judgment.

## FACTS

On May 9, 2016, Edwards pleaded guilty to two counts of felony murder, one count of aggravated burglary, and one count of aggravated robbery. The facts surrounding the crimes are not relevant to this appeal. At the time of the plea, Edwards was represented by Mark Rudy and Jason Smartt.

Before sentencing, Edwards filed a pro se motion to withdraw plea. Edwards alleged that he received ineffective assistance of counsel and that his plea "was [the] result of [manipulation] and lies orchestrated by his attorney" and because Edwards and his "attorney were having unlawful sexual sexual [*sic*] relations . . . ." Edwards was appointed counsel who filed an amended motion and memorandum to set aside the plea. In the amended motion, Edwards again alleged that he and one of his attorneys were in a consensual sexual relationship. He also alleged that his attorneys did not investigate the case or prepare for trial, they allowed Edwards' mother to exert undue influence on his decision to plead guilty, there was no consideration for the plea, and the factual basis was not adequately detailed in the absence of a preliminary hearing.

The district court held an evidentiary hearing on the motions on December 20, 2016. Edwards, Rudy, and Smartt testified. After hearing the evidence, the district court, in a detailed ruling from the bench, denied Edwards' motions. The district court sentenced Edwards to life imprisonment plus 141 months. Edwards appealed and the Kansas Supreme Court affirmed the district court's denial of his motion to withdraw plea but remanded with instructions to correct a clerical error in the journal entry of sentencing. *State v. Edwards*, 309 Kan. 830, 836, 838, 440 P.3d 557 (2019).

On March 10, 2020, Edwards filed a K.S.A. 60-1507 motion where he repeated several allegations of ineffective assistance of counsel addressed in his motion to withdraw plea. The district court appointed counsel, who filed an amended motion

alleging that Edwards' plea was not made knowingly and voluntarily because Rudy and Smartt: (1) failed to investigate a mental defect defense, (2) coerced him into the plea by using his mother to convince him, (3) failed to provide discovery to Edwards, (4) did not pursue a defense because they believed Edwards was guilty, and because (5) Rudy carried on a sexual relationship with Edwards. Edwards filed a separate memorandum of law in support of his motion. Attached to that memorandum was a psychological evaluation that had been completed in June 2022. The evaluation ended with the conclusion that "Mr. Edwards did not suffer from mental defect or disease at the time of his crime and at this time does not suffer from any mental defect or disease."

The district court held a nonevidentiary hearing on the K.S.A. 60-1507 motion on August 26, 2022. After hearing arguments from counsel, the district court walked through each of Edwards' claims and denied them from the bench. On whether Edwards' counsel failed to investigate a mental disease or defect defense, the district court found that Edwards' own psychological evaluation reached a conclusion that "Edwards was competent to stand trial, [and] did not suffer from a mental defect or disease at the time the crime was committed." The district court entered a minutes order incorporating by reference its ruling from the bench and denying Edwards' K.S.A. 60-1507 motion. Edwards timely appealed the district court's judgment.

#### ANALYSIS

On appeal, Edwards claims the district court erred in not holding an evidentiary hearing on his K.S.A. 60-1507 motion. The State argues that the district court properly denied Edwards' motion because the motion, files, and records of the case conclusively show that Edwards was not entitled to relief.

A district court must hold a hearing on a K.S.A. 60-1507 motion unless the motion, files, and records of the case conclusively show the movant is entitled to no

relief. K.S.A. 2022 Supp. 60-1507(b). The 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).

If the district court holds a preliminary hearing after the appointment of counsel, the appellate court must give deference to any factual findings made by the district court and we apply a bifurcated findings of fact and conclusions of law standard of review to determine whether the factual findings are supported by substantial competent evidence and whether those findings are sufficient to support its conclusions of law. The appellate court, however, has unlimited review over the district court's conclusions of law and its decision to grant or deny the K.S.A. 60-1507 motion. 311 Kan. at 578.

Claims of ineffective assistance of trial counsel are analyzed under the two-prong test articulated in *Strickland v. Washington*, 466 U.S. 668, 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) and adopted by the Kansas Supreme Court in *Chamberlain v. State*, 236 Kan. 650, 656-57, 694 P.2d 468 (1985). Under the first prong, the defendant must show that defense counsel's performance was deficient. If successful, the court moves to the second prong and determines whether there is a reasonable probability that, absent defense counsel's unprofessional errors, the result would have been different. *State v. Evans*, 315 Kan. 211, 217-18, 506 P.3d 260 (2022).

As the State points out, Edwards' K.S.A. 60-1507 motion asserted many claims that he received ineffective assistance of counsel, but the only claim that Edwards argues on appeal is that his counsel were ineffective for failing to investigate a mental defect defense. Issues not briefed are considered waived and abandoned. *State v. Davis*, 313 Kan. 244, 248, 485 P.3d 174 (2021). And even the one claim Edwards makes on appeal is addressed in a single sentence: "Edwards argues that he was entitled to an evidentiary hearing on his claim that he had received ineffective assistance from Rudy and Smartt when they failed to investigate a mental disease/defect defense, and have him evaluated for the potential of putting on said defense." The rest of Edwards' analysis focuses on the appropriate standard of review and whether or not his ineffective assistance of counsel claim is successive to the claims made in his motion to withdraw plea.

Edwards' brief lacks any argument on how the district court erred in denying his claim that Rudy and Smartt failed to investigate a mental disease or defect defense. Edwards does not, for example, allege that the district court's finding was unsupported by substantial competent evidence, and he does not explain why this court must reach a different legal conclusion than the district court. Without any argument beyond a single conclusory sentence alleging that the district court erred, Edwards has waived and abandoned the claim. *Friedman v. Kansas State Bd. of Healing Arts*, 296 Kan. 636, 645, 294 P.3d 287 (2013) ("A failure to support an argument with pertinent authority or to show why it is sound despite a lack of supporting authority or in the face of contrary authority is akin to failing to brief the issue.").

But even if we give Edwards the benefit of the doubt and try to address his claim, it fails on the merits. K.S.A. 2022 Supp. 21-5209 states: "It shall be a defense to a prosecution under any statute that the defendant, as a result of mental disease or defect, lacked the culpable mental state required as an element of the crime charged." K.S.A. 22-3219(2) provides that a mental disease or defect defense must be supported by a psychological evaluation of the defendant. Here, the district court focused on the

psychological evaluation that Edwards attached to the memorandum of law supporting his K.S.A. 60-1507 motion. The evaluation ended with the conclusion that Edwards did not have any psychological disease or defect at the time of the evaluation or when the underlying crime was committed. The district court relied on that conclusion to find that Edwards' own court filings showed that he did not have a mental disease or defect. As a result, Rudy and Smartt could not have been ineffective for failing to investigate a defense on that ground. Edwards' memorandum of law and the attached evaluation is substantial competent evidence supporting the district court's conclusion.

The motion, files, and records of the case conclusively showed that Edwards deserved no relief on his claims. As a result, the district court did not err in denying Edwards' K.S.A. 60-1507 motion without an evidentiary hearing.

Affirmed.