

NOT DESIGNATED FOR PUBLICATION

No. 125,662

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

LANCE ALLEN SCHMEIDLER,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Ellis District Court; GLENN R. BRAUN, judge. Opinion filed September 29, 2023.  
Affirmed.

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

Before CLINE, P.J., WARNER and PICKERING, JJ.

PER CURIAM: Lance Schmeidler appeals his sentence for aggravated sexual battery, arguing that the district court abused its discretion in denying his request for a downward durational departure. We granted Schmeidler's motion for summary disposition of his appeal under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). After reviewing the record, we find that the district court did not abuse its discretion and affirm Schmeidler's sentence.

The State charged Schmeidler with one count each of aggravated sexual battery, rape, aggravated criminal sodomy, and violation of a protective order. Schmeidler entered a diversion agreement for his charge of aggravated sexual battery under K.S.A. 2021

Supp. 21-5505(b)(1) and (c)(2) and also pleaded guilty to violating an earlier protective order. Schmeidler was placed on probation for 12 months with court services.

Less than two months later, the State moved to revoke Schmeidler's probation and diversion, alleging that he violated the terms of both by possessing and using methamphetamine on several occasions, by missing appointments with his court services officer, and by not reporting for drug treatment. The parties eventually entered into a revocation and disposition agreement, stating that, at sentencing, Schmeidler was free to request a dispositional departure and the State would request a downward durational departure to 60 months' imprisonment.

The district court conducted a hearing on the alleged violations. Schmeidler admitted to violating his diversion by possessing and using methamphetamine. The court found Schmeidler violated his diversion and probation and revoked both.

The district court then turned to the offense underlying Schmeidler's diversion—aggravated sexual battery. The court confirmed Schmeidler understood that he had already stipulated in the diversion agreement to the facts necessary to convict him of that offense. And it asked if Schmeidler understood that he would be convicted of a severity level 5 person felony if he admitted to violating his diversion, under the facts alleged in the affidavit. Schmeidler stated that he understood each of these points.

The district court explained that if it found Schmeidler guilty of aggravated sexual battery, it could sentence him to 128, 120, or 114 months' imprisonment based on his criminal history score of B. The court also stated that although the parties jointly recommended a durational departure to 60 months' presumptive imprisonment, the court was not required to follow that recommendation. The court went through each element of aggravated sexual battery and found Schmeidler guilty of that offense. It then set the case for sentencing.

At the sentencing hearing, the district court explained to Schmeidler that it was considering two sentencing options:

- It could sentence Schmeidler to 60 months' presumptive imprisonment based on the parties' joint sentencing recommendation.
- Or it could sentence Schmeidler to the aggravated sentence for the offense—128 months' imprisonment—but consider a dispositional departure to probation, as Schmeidler requested in his departure motion.

Schmeidler confirmed that he would prefer probation with a longer underlying sentence. The district court then sentenced him to 128 months' imprisonment and granted a dispositional departure to 36 months' probation.

Schmeidler appeals this sentence, arguing that his case warranted both a dispositional and a durational departure. In other words, he asserts the district court should have imposed a shorter underlying prison sentence even though it placed him on probation in lieu of the presumptive prison sentence. He also claims that the district court erred when it used his criminal history to determine his underlying sentence because that criminal history had not been proven to a jury beyond a reasonable doubt. We find neither argument persuasive.

A district court is not required to impose a departure sentence. Rather, Kansas law recognizes that a district court has discretion to enter a mitigated sentence, either in duration or disposition, when substantial and compelling reasons warrant departing from the presumptive sentencing range laid out by the Kansas Sentencing Guidelines. See K.S.A. 2022 Supp. 21-6818(a). Appellate courts review a district court's departure decision for an abuse of discretion. *State v. Morley*, 312 Kan. 702, 711, 479 P.3d 928

(2021). A district court abuses its discretion if no reasonable person would agree with its decision or if its decision is based on an error of law or fact. 312 Kan. at 711.

Schmeidler claims that the district court abused its discretion by denying his request for an underlying durational departure to 60 months' imprisonment and instead imposing the maximum presumptive sentence of 128 months' imprisonment. He asserts that he should have received a durational departure because he held a full-time job and had taken steps to address his addiction.

This case involved serious offenses. The district court granted Schmeidler's request for probation—over the State's strong opposition—after he violated diversion and probation. The court stated that it was placing Schmeidler on probation so that he could show that he would address his substance-abuse problem and comply with the law, but it imposed the aggravated 128-month prison sentence because it wanted to encourage Schmeidler to be successful on probation. This decision was reasonable, as it sought to balance leniency while still underscoring the gravity of Schmeidler's convictions. Schmeidler has not shown the district court abused its discretion.

Schmeidler also argues that the district court violated his rights by using his criminal history to increase his sentence without proving it to a jury beyond a reasonable doubt under *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). Kansas courts have consistently rejected this argument, and we do so again here. See *State v. Albano*, 313 Kan. 638, Syl. ¶ 4, 487 P.3d 750 (2021); *State v. Ivory*, 273 Kan. 44, Syl., 41 P.3d 781 (2002).

Affirmed.