

NOT DESIGNATED FOR PUBLICATION

No. 125,904

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

THOMAS K. EISMANN,
Appellant.

MEMORANDUM OPINION

Appeal from Wyandotte District Court; WESLEY K. GRIFFIN, judge. Submitted without oral argument. Opinion filed November 3, 2023. Affirmed.

Kristen B. Patty, of Wichita, for appellant.

Kayla Roehler, deputy district attorney, *Mark A. Dupree Sr.*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before BRUNS, P.J., PICKERING, J., and TIMOTHY G. LAHEY, S.J.

PER CURIAM: Thomas K. Eismann appeals the Wyandotte County District Court's denial of his motion to correct an illegal sentence. We find no error and affirm the district court.

FACTUAL AND PROCEDURAL BACKGROUND

Eismann entered an *Alford* guilty plea to possession of marijuana with the intent to distribute, a severity level 3 drug felony, and possession of drug paraphernalia, a class B nonperson misdemeanor. See *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L.

Ed. 2d 162 (1970) (permitting a criminal defendant to enter a plea while maintaining innocence).

At the sentencing hearing, the district court relied on the presentence investigation (PSI)—which included a 2002 conviction for attempted aggravated battery—to assign Eismann a criminal history score of C. Eismann had no objections or corrections to the PSI. After denying Eismann's motion for a sentencing departure, the district court ordered Eismann to serve 68 months in prison and 36 months of postrelease supervision.

In his direct appeal, Eismann challenged the district court's refusal to grant his departure motion but did not challenge his criminal history score. Because the district court imposed a guidelines sentence, this court dismissed the appeal for lack of jurisdiction. *State v. Eismann*, No. 124,664, 2022 WL 17073240, at *1-2 (Kan. App. 2022) (unpublished opinion), *rev. denied* 317 Kan. __ (May 5, 2023).

While his direct appeal was pending, Eismann filed a pro se motion to correct an illegal sentence, arguing that the district court erred in determining his criminal history score by including the previous conviction for attempted aggravated battery conviction as a person felony rather than a nonperson felony. After the district court denied that motion, Eismann filed this appeal.

ANALYSIS

This court exercises unlimited review over Eismann's claim that his sentence was illegal. See *State v. Johnson*, 317 Kan. 458, 461, 531 P.3d 1208 (2023). An illegal sentence is one imposed by a court without jurisdiction, a sentence that fails to conform to the applicable statutory scheme in character or punishment, or a sentence ambiguous with respect to the time and manner it is to be served. K.S.A. 2022 Supp. 22-3504(c)(1); see 317 Kan. at 461.

Eismann argues that his sentence is illegal because the district court improperly classified his 2002 Kansas felony conviction for attempted aggravated battery as a person crime, and that error caused Eismann to be sentenced with an incorrect criminal history score. If, as Eismann contends, the district court misclassified a prior conviction in determining his criminal history score, the resulting sentence would not properly conform to the applicable statutory scheme and would, therefore, be illegal. See *State v. Busch*, 317 Kan. 308, 311, 528 P.3d 560 (2023).

K.S.A. 2022 Supp. 21-6811(g) provides: "A prior felony conviction of an attempt . . . to commit a crime shall be treated as a person or nonperson crime in accordance with the designation assigned to the underlying crime." Since the implementation of the person/nonperson classification with the adoption of the Kansas Sentencing Guidelines Act in 1993, aggravated battery has been classified as a person felony. See K.S.A. 21-3414(b) (Furse 1995). It remains so classified today. See K.S.A. 2022 Supp. 21-5413(h)(2). Eismann cites no contrary authority to support his position, and he presents no argument explaining how or why the district court erred.

The statute leaves no ambiguity. The court is compelled to give effect to the legislative intent found within its plain language. *Busch*, 317 Kan. at 311 (citing *State v. Scheuerman*, 314 Kan. 583, 587, 502 P.3d 502, *cert. denied* 143 S. Ct. 403 [2022]). The district court properly classified Eismann's 2002 conviction for attempted aggravated battery as a person felony for determining his criminal history at sentencing. Eismann has not shown his sentence to be illegal, and the district court properly denied Eismann's motion.

Affirmed.