NOT DESIGNATED FOR PUBLICATION

No. 125,965

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

SHERRELL GARY BRINKLEY,
Appellant.

MEMORANDUM OPINION

Appeal from Leavenworth District Court; GERALD R. KUCKELMAN, judge. Submitted without oral argument. Opinion filed December 15, 2023. Affirmed.

Barry Albin, of Albin Law Chartered, of Wichita, for appellant.

Natalie Chalmers, assistant solicitor general, and *Kris W. Kobach*, attorney general, for appellee.

Before ISHERWOOD, P.J., GREEN and PICKERING, JJ.

PER CURIAM: Sherrell Gary Brinkley appeals the district court's summary denial of his motion to correct an illegal sentence. While serving a federal prison sentence in Florida, Brinkley was brought to Kansas so that he could be resentenced for a 1993 first-degree murder charge. In his motion to correct an illegal sentence, Brinkley argued the district court lacked jurisdiction to issue a writ with authority in another state. The district court reviewed it as a habeas corpus motion and denied it as successive. On appeal, Brinkley attempts to litigate the merits of his motion and sidesteps the fact the district court denied it as a successive K.S.A. 60-1507 motion. A movant is presumed to have listed all grounds for relief in an initial K.S.A. 60-1507 motion and, therefore, must show

exceptional circumstances to justify the filing of a successive motion. Brinkley fails in his burden to make such a showing. Consequently, we affirm the district court's ruling.

FACTUAL AND PROCEDURAL BACKGROUND

In 1993, a Kansas jury convicted Brinkley of first-degree murder. On direct appeal, the Kansas Supreme Court affirmed his conviction but remanded for resentencing. *State v. Brinkley*, 256 Kan. 808, 822-24, 888 P.2d 819 (1995). In the interim, however, Brinkley, pled guilty to multiple federal firearms offenses in North Carolina and the corresponding sentence commenced at a penitentiary outside Kansas before he could be resentenced for the murder. See *Brinkley v. State*, No. 122,161, 2021 WL 5992106, at *1 (Kan. App. 2021) (unpublished opinion).

Several years later, while Brinkley was still in federal custody, the State requested to have him temporarily transported under the Interstate Agreement on Detainers Act (IADA), K.S.A. 22-4401 et seq., so he could finally be resentenced. A few months later, it shifted course and instead pursued his transport via a petition for writ of *habeas corpus ad prosequendum*. The district court granted the State's petition and issued a writ ordering Brinkley's release from federal prison to Kansas authorities for the purpose of resentencing. The writ made no particular reference to a detainer under the IADA, but the State attached an addendum which included the prosecutor's certification and a Form VI—documents that are required to obtain a detainer under the IADA. Upon realizing that an IADA detainer is an avenue reserved for pending prosecutions, and therefore the incorrect mechanism to accomplish its goal, the State released its detainer and filed a new writ of *habeas corpus ad prosequendum*, which the district court also granted. This time, the State did not attach any IADA related documents.

Brinkley was transferred to Kansas in June 2017, and the court resentenced him in August 2017. See *Brinkley*, 2021 WL 5992106, at *2. Brinkley's attorney raised the

detainer issue at the resentencing hearing, but the district court determined that the IADA did not apply:

> "Mr. Brinkley, your attorney brings up the issue of the detainer, but as well known the—the Uniform Detainer Act does only apply to having detainers removed when there's been a—when a case is pending. But once the case is concluded, those detainers do not apply and are not subject to the mandatory disposition within 180 days. So addressing that briefly, I've noted that for the record."

The district court sentenced Brinkley to a single term of life imprisonment. He completed his federal sentence in October 2017 and was immediately released into the custody of the Kansas Department of Corrections. See *Brinkley*, 2021 WL 5992106, at *2.

Brinkley filed a K.S.A. 60-1507 motion and alleged he experienced double-jeopardy and due process violations. The district court denied the motion following a nonevidentiary hearing. On appeal, a panel from this court concluded that Brinkley's claims were not appropriate for a collateral challenge under K.S.A. 60-1507 and affirmed the district court's decision. *Brinkley*, 2021 WL 5992106, at *2.

Brinkley then filed a motion to correct an illegal sentence and alleged the district court lacked authority to issue the writ of *habeus corpus ad prosequendum* to return him to Kansas from federal prison which in turn deprived it of jurisdiction to resentence him. The district court interpreted the filing as a K.S.A. 60-1507 motion and summarily denied it as successive because the same issues were litigated in his previous K.S.A. 60-1507 motion. The court added that review of the merits of his claim was barred by principles of res judicata.

Brinkley filed a motion to reconsider claiming that the district court's order was based on erroneous findings of fact and conclusions of law. The district court denied the

motion upon finding that Brinkley's return to Kansas was legally sound and it had jurisdiction to resentence him.

The case is now before us to analyze the propriety of the legal basis the district court relied upon in denying his motion.

LEGAL ANALYSIS

The district court's summary denial of Brinkley's motion to correct an illegal sentence as a successive habeas corpus motion was legally sound.

Brinkley contends the district court erred in summarily denying his motion and thereby rejecting his claim that he was wrongfully transported to Kansas under the IADA given that his return was not tied to an untried indictment, complaint, or information. He asserts that the denial of his motion reflects the court's failure to appreciate the fact that the flawed legal vehicle relied upon for his return deprived the district court of jurisdiction to resentence him.

Presumably, Brinkley is appealing the district court's decision to deny his motion to correct an illegal sentence given that is how he chose to present his claim to the district court. But the analysis in his brief for our court contains no mention of K.S.A. 2022 Supp. 22-3504(a) or corresponding analysis under that framework. Nor does it mention K.S.A. 2022 Supp. 60-1507, the statutory lens through which the district court viewed and denied his motion. Instead, he simply reiterates that his resentencing violated the IADA because he was not tried on any pending charges as contemplated by that principle. Issues not adequately briefed are deemed waived or abandoned. *State v. Gallegos*, 313 Kan. 262, 277, 485 P.3d 622 (2021). Similarly, a failure to support a point with pertinent authority is akin to a failure to brief the issue. *State v. Meggerson*, 312 Kan. 238, 246, 474 P.3d 761 (2020). Because Brinkley fails to brief the issue as a

challenge to the propriety of the district court's denial of his motion, we are well within our right to deem the claim waived or abandoned.

Even if we independently conduct an analysis of the district court's decision, it does not yield a favorable outcome for Brinkley. When a district court summarily denies a motion to correct an illegal sentence, the appellate court applies an unlimited standard of review because the appellate court has the same access to the motion, records, and files as the district court. *State v. Mitchell*, 315 Kan. 156, 158, 505 P.3d 739 (2022). In so doing, like the district court, we have the discretion to construe an improper motion to correct illegal sentence as a motion challenging the sentence under K.S.A. 2022 Supp. 60-1507. See *State v. Redding*, 310 Kan. 15, 19, 444 P.3d 989 (2019) (citing *State v. Harp*, 283 Kan. 740, 744-45, 156 P.3d 1268 [2007]).

The district court viewed Brinkley's motion as a successive habeas corpus filing under K.S.A. 2022 Supp. 60-1507. We have no quarrel with that approach and again, Brinkley's brief is devoid of any argument that endeavors to establish why we should find error in that view. Brinkley seeks to dismiss his conviction. Such a remedy is not available through a motion to correct illegal sentence. Rather, motions filed under K.S.A. 2022 Supp. 22-3504 are designed to correct a sentence that is flawed in one of three specific ways, as defined by subsection (c)(1) of that statute, not to obtain reversal of one's conviction. See *State v. Ross*, 315 Kan. 804, 806, 511 P.3d 290 (2022).

Brinkley is clearly raising a collateral attack on his sentence under K.S.A. 60-1507 with an eye toward obtaining "dismissal" of his murder conviction, which he already attempted to do through a previous K.S.A. 60-1507 motion. See *Brinkley*, 2021 WL 5992106, at *2. "[U]nder K.S.A. 2020 Supp. 60-1507(c), district courts need not consider more than one habeas motion seeking similar relief filed by the same prisoner." *Mitchell*, 315 Kan. at 160; see Supreme Court Rule 183(d) (2023 Kan. S. Ct. R. at 243). A movant is presumed to have listed all grounds for relief in an initial K.S.A. 60-1507 motion and,

therefore, "must show exceptional circumstances to justify the filing of a successive motion." 315 Kan. at 160. Exceptional circumstances are unusual events or intervening changes in the law that prevented the movant from reasonably being able to raise the issue in the first postconviction motion. 315 Kan. at 160. Brinkley has not articulated any exceptional circumstances that justified review of his successive motion. Accordingly, we find the district court properly dismissed Brinkley's K.S.A. 60-1507 motion as successive.

Affirmed.