NOT DESIGNATED FOR PUBLICATION

No. 126,245

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

MANUEL PARA-DELAROSA,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; JEFFREY SYRIOS, judge. Submitted without oral argument. Opinion filed March 22, 2024. Affirmed.

Kai Tate Mann, of Kansas Appellate Defender Office, for appellant.

Lance J. Gillett, assistant district attorney, *Marc Bennett*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before GREEN, P.J., HILL and CLINE, JJ.

PER CURIAM: Manuel Para-Delarosa pled guilty to a felony and a misdemeanor. He was sentenced to 12 months of probation with underlying consecutive terms of 6 months in prison for the felony and 12 months in jail for the misdemeanor. He now claims that sentence is illegal because it violates K.S.A. 2021 Supp. 21-6819(b) in two ways: (1) K.S.A. 2021 Supp. 21-6819(b)(4) prohibits a total prison sentence involving multiple convictions from exceeding twice the base sentence; and (2) K.S.A. 2021 Supp. 21-6819(b)(6) requires an entire imprisonment term be served in prison if the primary crime is a prison term.

We find his arguments unpersuasive because the Kansas Supreme Court has repeatedly held that the sentencing rules described in K.S.A. 2021 Supp. 21-6819(b) apply only to felony convictions and not misdemeanors. See *State v. Snow*, 282 Kan. 323, 346, 144 P.3d 729 (2006); *State v. Huff*, 277 Kan. 195, 197-98, 83 P.3d 206 (2004) (both addressing K.S.A. 21-4720[b], recodified as K.S.A. 21-6819[b]). Para-Delarosa does not claim the Supreme Court has provided any indication that it is departing from this position, nor are we aware of any. We are therefore duty-bound to affirm Para-Delarosa's sentence. See *State v. Patton*, 315 Kan. 1, 16, 503 P.3d 1022 (2022).

On November 23, 2022, pursuant to a plea agreement, Para-Delarosa pled guilty to criminal threat, a severity level 9 person felony, and cruelty to animals, a nonperson class A misdemeanor. The district court sentenced Para-Delarosa to 12 months of probation with underlying consecutive terms of 6 months in prison and 12 months in jail, for a controlling term of 18 months incarcerated.

Para-Delarosa argues that his sentence is illegal by failing to conform to the applicable statutory provisions in character and term. He asserts that, under K.S.A. 2021 Supp. 21-6819(b)(4) and (b)(6), he must serve his entire sentence in prison and his total sentence is illegally more than twice as long as his base sentence. He asks us to vacate his sentence, which we would have authority to do since an illegal sentence may be corrected at any time while the defendant is serving such sentence. K.S.A. 22-3504(a).

The problem with Para-Delarosa's argument, which he acknowledges, is the Kansas Supreme Court has found the sentencing rules on which he relies do not apply to misdemeanors. See *Snow*, 282 Kan. at 346; *Huff*, 277 Kan. at 197-98. And since Para-Delarosa was only sentenced for one felony conviction and that sentence is already entirely a prison term, those rules were not violated.

In *Huff*, the defendant pled guilty to two felonies and three misdemeanors. The district court granted the defendant probation with an underlying sentence of 16 months in prison for the felonies and 12-month consecutive jail sentences on each of the three misdemeanor offenses to run consecutive to the primary felony offense. This resulted in a total sentence that was more than twice as long as the defendant's base sentence.

To the Court of Appeals, the defendant argued, *inter alia*, the district court had no authority to impose consecutive jail sentences on her misdemeanor offenses. The Court of Appeals found the district court had authority to impose consecutive sentences under K.S.A. 21-4608(a) and K.S.A. 2002 Supp. 21-4720(b), the latter of which was recodified as K.S.A. 21-6819(b). Yet it also found "K.S.A. 2002 Supp. 21-4720(b), which provides that '[t]he sentencing judge shall otherwise have discretion to impose concurrent or consecutive sentences in multiple conviction cases,' applies only to felony sentences under the Kansas Sentencing Guidelines Act (KSGA)." 277 Kan. at 197. Although the defendant did not challenge this finding on appeal, the Kansas Supreme Court noted this finding appeared to be correct. 277 Kan. at 197. It then approvingly analyzed the holding in *State v. Reed*, 23 Kan. App. 2d 661, 662-63, 934 P.2d 157 (1997), which found that neither K.S.A. 1993 Supp. 21-4720(b)(4) nor K.S.A. 1994 Supp. 21-4720(b)(4), which prohibited the total sentence from exceeding twice the base sentence, applied to misdemeanor convictions. *Huff*, 277 Kan. at 197. "Consequently, *Reed* concluded that a defendant may be sentenced to consecutive misdemeanor convictions in addition to the sentence imposed under K.S.A. 21-4720(b)(4) for any multiple felony convictions." 277 Kan. at 197.

Para-Delarosa argues this reasoning in *Huff* was unnecessary to that court's holding and is thus nonbinding dicta because *Huff* did not turn on whether K.S.A. 21-4720 applied to misdemeanors generally. Closer reading of the analysis in *Huff* contradicts Para-Delarosa's argument. In *Huff*, the court specifically found that Article 47—which included K.S.A. 21-4720(b)—applied only to felony crimes. It then

differentiated Article 47 from Article 46, which included K.S.A. 21-4608 authorizing consecutive sentencing for misdemeanors and felonies. 277 Kan. at 202-03. This was important because the defendant in *Huff* was asserting that because Article 47 applied only to felonies, and Article 46 used similar language, that Article 46 also applied only to felonies and the district court thus had no authority to impose her consecutive misdemeanor sentences. Because the *Huff* court analyzed the applicability of Article 47 to felonies in order to assess applicability of another statute, its holding that K.S.A. 2002 Supp. 21-4720(b) dealt only with felony crimes was not dicta. See Black's Law Dictionary 569 (11th ed. 2019) (defining "judicial dictum" as "[a]n opinion by a court on a question that is directly involved, briefed, and argued by counsel, and even passed on by the court, but that is not essential to the decision and therefore not binding even if it may later be accorded some weight").

Later, in *Snow*, a jury convicted the defendant of 15 felonies and 4 misdemeanors. The district court sentenced the defendant to 23 months in prison for his base sentence and ordered all felony sentences to run consecutive for a total of 187 months in prison due solely to his felony convictions. It also ordered him to serve six months for each misdemeanor to run consecutive to the felony sentences. On appeal, the defendant asserted that K.S.A. 2005 Supp. 21-4720(b)(4) prohibited his maximum total sentence from being twice as much as his base sentence, and the district court erred by ordering his misdemeanor sentences to run consecutive to each other and consecutive to his felony sentences which resulted in a total sentence exceeding the maximum allowable penalty. In doing so, the defendant argued, he was subject to an increased penalty for committing lesser crimes in violation of the Eighth Amendment to the United States Constitution.

The *Snow* court held that the defendant's sentence did improperly exceed twice his base sentence because of his *felony* sentences. 282 Kan. at 346. It then stated that "K.S.A. 2005 Supp. 21-4720(b) does not apply to misdemeanor sentences" meaning his consecutive misdemeanor sentences cannot be truncated like his felony sentences. 282

Kan. at 346 (citing *Huff*, 277 Kan. at 197-98). To determine whether the defendant's sentence was illegal, the *Snow* court needed to determine whether K.S.A. 2005 Supp. 21-4720(b) applied to just his felony convictions or also to his misdemeanors. Thus, it was not dictum when the court stated K.S.A. 2005 Supp. 21-4720(b) applied only to the defendant's felony convictions, contrary to Para-Delarosa's assertion.

As further support that the court's holdings in *Snow* and *Huff* are not dicta, we refer to *State v. Huerta*, 291 Kan. 831, 837, 247 P.3d 1043 (2011) (distinguishing defendant's case from *Snow*). In *Huerta*, the Kansas Supreme Court again discussed its opinion in *Snow* and explained that "[b]ecause of K.S.A. 21-4720(b), his total sentence for the felonies was limited to twice the base felony sentence. But K.S.A. 21-4720(b) does not apply to misdemeanor sentences, and his consecutive misdemeanor sentences were not truncated." 291 Kan. at 837.

Reading *Huff* and *Snow* reveals that interpretation and application of K.S.A. 21-4720(b) was essential to their holdings. Further, Para-Delarosa's argument ignores that all three cases—Para-Delarosa's, *Huff*, and *Snow*—turned on whether misdemeanor sentences are controlled by K.S.A. 21-4720(b) and its current iteration in K.S.A. 21-6819(b). Although he disagrees with the Kansas Supreme Court's finding that these statutes apply only to felony convictions, we are duty-bound to follow precedent absent some indication the Supreme Court is departing from its previous position. *Patton*, 315 Kan. at 16.

Review of K.S.A. 2002 Supp. 21-4720(b) and K.S.A. 2005 Supp. 21-4720(b) reveal nonsubstantive changes to the relevant portions of their recodification at K.S.A. 2021 Supp. 21-6819(b). As a result, we find that, based on precedent set in *Huff* and *Snow*, K.S.A. 2021 Supp. 21-6819(b) applies solely to felony convictions. Therefore, Para-Delarosa's sentence is not illegal under either K.S.A. 2021 Supp. 21-6819(b)(4) or (b)(6).

Affirmed.