

NOT DESIGNATED FOR PUBLICATION

No. 113,960

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

LARRY CURTIS,
Appellant.

MEMORANDUM OPINION

Appeal from Wyandotte District Court; R. WAYNE LAMPSON, judge. Opinion filed April 22, 2016. Affirmed.

Submitted for summary disposition by the parties pursuant to K.S.A. 2015 Supp. 21-6820(g) and (h).

Before STANDRIDGE, P.J., PIERRON, J., and JOHNSON, S.J.

Per Curiam: Larry Curtis appeals the denial of his motion to correct an illegal sentence.

In 1999, Curtis pled guilty to aggravated robbery. The district court found Curtis had a criminal history score of A because it included three person felonies. Curtis' 1985 and 1990 Missouri convictions for robbery were scored as person felonies.

After the Supreme Court's decision in *State v. Murdock*, 299 Kan. 312, 313, 323 P.3d 846 (2014), *modified by Supreme Court order* September 19, 2014, *overruled by State v. Keel*, 302 Kan. 560, 357 P.3d 251 (2015) *cert. denied* 136 S. Ct. 865 (2016),

Curtis filed a motion to correct an illegal sentence arguing his 1985 and 1990 offenses were illegally scored as person felonies contrary to *Murdock*. The district court denied his motion.

On appeal, Curtis argues his pre-Kansas Sentencing Guidelines Act (KSGA) convictions should be converted to nonperson felonies pursuant to *Murdock*. In *Murdock*, the Kansas Supreme Court held that out-of-state convictions committed prior to the enactment of the KSGA must be classified as nonperson offenses for a defendant's criminal history. 299 Kan. at 319. However, as Curtis acknowledged, *Keel* overruled *Murdock*, and held pre-KSGA convictions "must be classified as either a person or nonperson offense by comparing the criminal statute under which the prior offense arose to the comparable post-KSGA criminal statute" in effect when the accused committed the current crime of conviction. 302 Kan. at 581. In 1998, robbery was a person felony. K.S.A. 21-3426. Curtis' criminal history was properly scored.

Affirmed.