

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 122,418

STATE OF KANSAS,  
*Appellee,*

v.

JUSTIN W. STEINERT,  
*Appellant.*

SYLLABUS BY THE COURT

1.

Statutory interpretation presents a question of law over which appellate courts have unlimited review.

2.

A defendant may file a motion to correct an illegal sentence under K.S.A. 2022 Supp. 22-3504(a) in an appellate court while on direct appeal.

3.

A challenge to the classification of a prior conviction and the resulting criminal-history score presents an illegal-sentence claim that may be raised for the first time on appeal.

4.

A new rule for conducting criminal prosecutions is to be applied to all cases pending on direct review or not yet final.

5.

Under K.S.A. 2022 Supp. 21-6820(i), a sentencing court retains jurisdiction to correct an illegal sentence or clerical error under K.S.A. 22-3504 irrespective of a defendant's appeal.

6.

The Kansas Supreme Court has the inherent power to take actions reasonably necessary for the administration of justice, provided the exercise of that power in no way contravenes or is inconsistent with the substantive statutory law.

Review of the judgment of the Court of Appeals in an unpublished opinion filed June 24, 2022. Appeal from Sedgwick District Court; BRUCE C. BROWN, judge. Opinion filed May 26, 2023. Judgment of the Court of Appeals denying the motion to correct illegal sentence is reversed, and the case is remanded to the district court with directions.

*Kai Tate Mann*, of Kansas Appellate Defender Office, argued the cause and was on the briefs for appellant.

*Lance J. Gillett*, assistant district attorney, argued the cause, and *Marc Bennett*, district attorney, and *Derek Schmidt*, attorney general, were with him on the brief for appellee.

The opinion of the court was delivered by

WALL, J.: Under the Kansas Sentencing Guidelines Act, the presumptive sentence for most felonies is derived from the severity level of the offense and the defendant's criminal history, which is reflected in a criminal-history score. See K.S.A. 2022 Supp. 21-6804 and 21-6805. A separate statute, K.S.A. 2022 Supp. 22-3504, provides that a sentence is illegal and may be corrected "at any time" if it fails to conform to these and

other "applicable statutory provision[s]." Kansas appellate courts commonly review challenges at the intersection of these statutes when defendants claim their criminal-history score is inaccurate, rendering their sentence illegal.

This case presents such a challenge. After receiving a 71-month prison sentence for crimes he committed in Wichita, Justin W. Steinert appealed his sentence to the Court of Appeals, arguing that he should have been sentenced using a lower criminal-history score. But what makes this case unique is that Steinert filed his motion to correct an illegal sentence in the appellate court, not the district court. And, while his direct appeal was pending, the Legislature added procedures governing criminal-history challenges raised for the first time on appeal. See L. 2022, ch. 73, sec. 4; K.S.A. 2022 Supp. 21-6814.

A panel of the Court of Appeals held that a motion to correct an illegal sentence could not be filed in the appellate court. And it further suggested that the preservation rule—which generally requires issues first be raised at the district court to preserve them for appellate court review—gave the panel discretion to deny review of Steinert's claim. Even so, the panel reached the merits of Steinert's challenge, reasoning that the preservation rule is subject to exceptions. The panel then proceeded to deny Steinert's claim on the merits.

Steinert petitioned our court for review, arguing (1) the panel erred in holding that an illegal-sentence motion cannot be filed in an appellate court, and (2) he was entitled to a remand hearing on the motion under K.S.A. 2022 Supp. 22-3504. He also argued the recent statutory amendment reflected in K.S.A. 2022 Supp. 21-6814(d) applies to his case. And under that amendment, he can submit a journal entry to the appellate courts showing that his 2016 Arkansas misdemeanor conviction should not have factored into his criminal-history score. The panel declined to apply this statutory amendment and refused to consider the purported journal entry.

We agree with some of Steinert's arguments challenging the panel's decision. First, under our established precedent, appellate courts have subject matter jurisdiction over an illegal sentence motion raised for the first time on direct appeal, and such claims are not subject to the preservation rule. Second, the recent statutory amendment reflected in K.S.A. 2022 Supp. 21-6814(d) applies to Steinert's appeal because changes in the law generally apply to cases, like Steinert's, that are pending on direct review.

Even so, under the facts and unique procedural posture of this case, prudence dictates that our court exercise judicial restraint by (1) not deciding whether Steinert may submit the Arkansas journal entry in support of his claim, and (2) not reaching the merits of his illegal-sentence motion. For one, there is a factual dispute about whether the document Steinert submitted is, in fact, a journal entry. Also, at oral argument, the parties offered differing interpretations of the 2022 amendment to K.S.A. 21-6814(d). But they did not brief these questions of statutory interpretation. Nor did the panel address them.

Given these unique circumstances, we conclude the district court is better positioned to resolve the parties' factual dispute and to determine whether Steinert's criminal history score was calculated improperly, rendering his sentence illegal. Under another recent statutory amendment reflected in K.S.A. 2022 Supp. 21-6820(i), the district court has concurrent jurisdiction to hear Steinert's illegal-sentence claim. And we have the inherent power to take actions reasonably necessary for the administration of justice, including the power to decide which forum should exercise its concurrent jurisdiction to resolve Steinert's illegal sentence motion.

Thus, we reverse the panel's holding denying Steinert's illegal-sentence motion and remand that claim to the district court to exercise its concurrent jurisdiction consistent with this opinion.

## FACTS AND PROCEDURAL BACKGROUND

In November 2018, the State charged Steinert with several offenses, including kidnapping. Steinert had allegedly forced a teenager into his house at gunpoint and then coerced the teenager into taking scales and a container of marijuana to sell on Steinert's behalf. Steinert and the State worked out an agreement that allowed him to enter an *Alford* plea, named for the 1970 Supreme Court case that permits a defendant to plead guilty to an offense under a claim of innocence. *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970). In exchange for Steinert's plea, the State agreed to dismiss the kidnapping charge and amend an aggravated-assault charge to one count of aggravated robbery. The district court then found Steinert guilty of aggravated robbery and the remaining charges—contributing to a child's misconduct, distribution of marijuana, and possession of paraphernalia to distribute or manufacture.

A presentence investigation report (PSI) prepared after Steinert's *Alford* plea calculated his criminal-history score as H, the second lowest score, based on two adult nonperson misdemeanor convictions. One of those convictions was a 2016 Arkansas conviction in Cleburne County District Court. The PSI described the offense as "Theft/Shoplifting" and listed Ark. Code Ann. § 5-36-116 as the violated statute. At sentencing, Steinert agreed the PSI was accurate and that his criminal-history score was H. The district court imposed a controlling 71-month sentence, and Steinert timely appealed to the Court of Appeals.

While drafting Steinert's brief, appellate counsel obtained a purported copy of the journal entry from the 2016 Arkansas conviction. That document listed the violated statute alternately as Ark. Code Ann. § 5-36-116 (the same statute listed on the PSI) and Ark. Code Ann. § 5-36-102—"Theft/shoplifting" (which was not listed on the PSI). The space identifying Steinert's attorney in the matter was also left blank. Appellate counsel

believed those discrepancies could support an illegal-sentence claim, so he sought to introduce the journal entry into the Court of Appeals proceedings. The State objected to each of Steinert's attempts to do so.

First, Steinert attached the journal entry to his appellate brief. Then, he moved to add the journal entry to the appellate record under Supreme Court Rule 3.02(d)(4) (2022 Kan. S. Ct. R. at 21). Chief Judge Arnold-Burger denied that motion, finding that the journal entry "[w]as not part of the record below" and that Steinert's request "d[id] not comply with rule 3.01." Finally, Steinert filed a motion to correct an illegal sentence under K.S.A. 2022 Supp. 22-3504 in the Court of Appeals, again attaching the journal entry.

That illegal-sentence motion repeated two of the arguments Steinert had made in his appellate brief. First, Steinert argued the Arkansas journal entry did not establish his crime of conviction, so it was impossible to determine whether a comparable Kansas offense existed. See K.S.A. 2022 Supp. 21-6811(e)(2)(B) (out-of-state misdemeanor convictions may be used to calculate a criminal history score only if there is a comparable Kansas offense). Second, Steinert argued the journal entry showed he had not been represented by counsel. See *State v. Youngblood*, 288 Kan. 659, Syl. ¶ 3, 206 P.3d 518 (2009) (uncounseled misdemeanor convictions generally cannot be used to enhance a sentence in a different case).

But Steinert's motion did more than just rehash the illegal-sentence arguments from his appellate brief. Steinert requested the Court of Appeals remand to the district court under K.S.A. 2021 Supp. 22-3504(a), which provides that a "defendant shall have a right to a hearing" on an illegal-sentence motion "[u]nless the motion and the files and records of the case conclusively show that the defendant is entitled to no relief." As Steinert explained, remand to the district court was necessary because he bore the burden of proving a criminal-history error on appeal under K.S.A. 2022 Supp. 21-6814(c), but he

had been prevented from introducing into the appellate proceedings the Arkansas journal entry essential to proving his claim. See K.S.A. 2022 Supp. 21-6814(c) ("If the offender later challenges such offender's criminal history, which has been previously established, the burden of proof shall shift to the offender to prove such offender's criminal history by a preponderance of the evidence."). Although Steinert did not cite *State v. Van Cleave*, 239 Kan. 117, 716 P.2d 580 (1986), the procedure he proposed was like the one set out in that case for addressing ineffective assistance of counsel claims raised on direct appeal. See 239 Kan. 117, Syl. ¶ 2 ("When appellate counsel in a criminal case desires to raise the issue of ineffective assistance of counsel and that issue has never been ruled upon by the trial court, defendant may seek a remand of the case to the trial court for an initial determination of the issue.").

The Court of Appeals panel denied relief. *State v. Steinert*, No. 122,418, 2022 WL 2286921, at \*5, 11 (Kan. App. 2022) (unpublished opinion). The panel held that a defendant may not file a K.S.A. 22-3504 motion in an appellate court. It reasoned: "To say that an illegal sentence may be corrected 'at any time' does not mean that one may file that motion 'in any court.' We are a court of review, not a fact-finding court." 2022 WL 2286921, at \*5. It also held that the Arkansas journal entry was not part of the appellate record, and without the benefit of that document, Steinert had not met his burden to show that his criminal-history score was incorrect. 2022 WL 2286921, at \*5. The panel also rejected the other challenges Steinert had raised in his appellate brief, but those issues are not before us.

One week after the panel issued its opinion, a statutory amendment establishing procedures for challenging criminal history for the first time on appeal went into effect. See L. 2022, ch. 73, § 4, eff. July 1, 2022. The text of the amendment provides:

"(d) If an offender raises a challenge to the offender's criminal history for the first time on appeal, the offender shall have the burden of designating a record that shows

prejudicial error. . . . In designating a record that shows prejudicial error, the offender may provide the appellate court with journal entries of the challenged criminal history that were not originally attached to the criminal history worksheet." K.S.A. 2022 Supp. 21-6814(d).

On the same day the amendment became effective, Steinert asked the panel to reconsider or modify its decision. In Steinert's view, the amendment applied retroactively and required the panel to consider the Arkansas journal entry when evaluating the merits of his illegal-sentence claims. The panel denied Steinert's request without analysis.

Steinert then petitioned our court for review, and we agreed to review two issues: (1) whether the panel had erred when it denied Steinert's K.S.A. 22-3504 motion on the grounds that illegal-sentence motions cannot be filed in appellate courts; and (2) whether the 2022 amendment to K.S.A. 21-6814 applied to Steinert's appeal.

While Steinert's petition for review was pending, he also filed a motion in our court to introduce the Arkansas journal entry. He cited the recent statutory amendment as support for his motion. In response, the State insisted that the document Steinert attached to his motion was not a journal entry. Steinert filed an affidavit asserting otherwise from an employee of the Arkansas county's district court. We took the motion under advisement. Neither party filed a supplemental brief. We held oral argument in this matter on February 3, 2023. Jurisdiction is proper. See K.S.A. 60-2101(b) (providing for Kansas Supreme Court review of Court of Appeals decisions).

#### ANALYSIS

Steinert advances two arguments. First, he contends the panel erred by denying his K.S.A. 22-3504 motion. He claims a defendant may file that type of motion in an appellate court and that K.S.A. 2022 Supp. 22-3504 establishes a *Van Cleave*-like

procedure for a remand hearing on an illegal-sentence claim. Second, he argues K.S.A. 2022 Supp. 21-6814(d) applies to his case and allows him to submit the Arkansas journal entry to the appellate courts. In his view, that journal entry shows his criminal-history score was wrongly calculated, rendering his sentence illegal. We address each argument in turn.

I. *Kansas Law Permits a Defendant to File a Motion to Correct an Illegal Sentence in an Appellate Court on Direct Appeal, but the Question of Remand Is Governed by K.S.A. 2022 Supp. 21-6814(d), not K.S.A. 2022 Supp. 22-3504(a)*

The panel held that K.S.A. 22-3504 prohibits a defendant from filing an illegal-sentence motion in an appellate court. *Steinert*, 2022 WL 2286921, at \*5. Steinert argues that holding conflicts with our decision in *State v. Keel*, 302 Kan. 560, 571, 357 P.3d 251 (2015). He also claims he is entitled to a remand hearing in the district court under K.S.A. 2022 Supp. 22-3504(a), which states that a "defendant shall have a right to a hearing" on an illegal sentence motion "[u]nless the motion and the files and records of the case conclusively show that the defendant is entitled to no relief." In Steinert's view, the Arkansas journal entry at least raises questions about his crime of conviction and whether he was represented by counsel, so it has not been *conclusively* shown that he is entitled to no relief.

Resolving these issues requires us to interpret K.S.A. 2022 Supp. 22-3504. Statutory interpretation presents a question of law over which we have unlimited review. Thus, we need not defer to the panel's conclusions. *State v. Stoll*, 312 Kan. 726, 736, 480 P.3d 158 (2021).

To resolve Steinert's first issue on appeal, we consider whether the panel erred by holding that a defendant cannot file a motion to correct an illegal sentence in the appellate courts while on direct appeal. Then, we address Steinert's argument that remand is governed by, and authorized under, K.S.A. 2022 Supp. 22-3504(a).

A. *Kansas Law Permits a Defendant to File a Motion to Correct an Illegal Sentence in an Appellate Court on Direct Appeal*

We agree with the first part of Steinert's argument: the panel's holding that a defendant may not file a K.S.A. 22-3504 motion in the appellate courts on direct appeal conflicts with our precedent. In *Keel*, which the panel did not address, a defendant filed a K.S.A. 22-3504 motion in our court after we had granted his petition for review on other issues raised in his direct appeal. Citing K.S.A. 22-3504(1)—which authorized a court to correct an illegal sentence "at any time"—we held that the defendant's motion was properly before our court. *Keel*, 302 Kan. at 571. That holding was a corollary to *State v. Dickey*, 301 Kan. 1018, 350 P.3d 1054 (2015), decided a few months before *Keel*. In *Dickey*, we held that because K.S.A. 22-3504(1) authorized a court to correct an illegal sentence "at any time," a challenge to the classification of a prior conviction and the resulting criminal-history score could be raised for the first time on appeal because it presented an illegal-sentence claim. 301 Kan. 1018, Syl. ¶¶ 1, 3. Based on those precedents, we conclude that the panel erred.

Further, we take issue with the panel's suggestion that both subject matter jurisdiction and the preservation rule would ordinarily preclude review of Steinert's illegal-sentence motion raised on direct appeal. After describing Steinert's challenge to his criminal history, the panel indicated that statutory limits to appellate jurisdiction would ordinarily preclude review because Steinert entered an *Alford* plea and received a presumptive sentence. *Steinert*, 2022 WL 2286921, at \* 2; see also K.S.A. 2022 Supp. 22-3602(a) (limiting jurisdiction to review an appeal from a judgment of conviction upon a guilty or no contest plea); K.S.A. 2022 Supp. 21-6820(c) (foreclosing appellate review of a presumptive sentence for the crime or any sentence resulting from an agreement between the State and the defendant approved on the record).

And because Steinert failed to first raise his illegal sentence claim before the district court, the panel also suggested the preservation rule could have foreclosed review of Steinert's motion. 2022 WL 2286921, at \* 2; see *State v. Keys*, 315 Kan. 690, 696, 510 P.3d 706 (2022) ("Generally, issues not raised before the district court cannot be raised on appeal."). But citing *State v. Gray*, 311 Kan. 164, 170, 459 P.3d 165 (2020), and asserting that our court "liberally construes the laws in this context," the panel purported to use its discretion to reach the merits of Steinert's challenge. *Steinert*, 2022 WL 2286921, at \* 2.

We disagree with the panel's jurisdictional analysis. First, jurisdiction is not a prudential doctrine. So, if the panel believed it lacked subject matter jurisdiction to review Steinert's illegal sentence claim, then it should not have proceeded to the merits. *In re Estate of Lentz*, 312 Kan. 490, 504, 476 P.3d 1151 (2020) ("[O]nce a Court of Appeals panel concludes jurisdiction is lacking, the better practice is not to proceed to opine about the merits of the issues.").

Second, and more important, we have held that appellate jurisdiction over an illegal sentence motion is inherent in K.S.A. 22-3504's language authorizing a court to correct an illegal sentence "at any time." See *State v. Clark*, 313 Kan. 556, 568, 486 P.3d 591 (2021); *State v. McCroy*, 313 Kan. 531, 535-36, 486 P.3d 618 (2021). As noted, our precedent further establishes that the exercise of this appellate jurisdiction is proper even when a defendant raises the illegal sentence motion for the first time on direct appeal. See *Keel*, 302 Kan. at 571. And we have also held that K.S.A. 22-3504 grants appellate courts subject matter jurisdiction over illegal sentence claims, even when (1) the sentence is the result of a plea agreement approved by the district court on the record; or (2) the sentence is within the presumptive sentence for the crime. See *State v. Jones*, 293 Kan. 757, 761, 268 P.3d 491 (2012) (appellate jurisdiction proper under K.S.A. 22-3504 even though sentence was the result of plea); see also *State v. Morningstar*, 299 Kan. 1236, Syl. ¶ 1,

329 P.3d 1093 (2014) (Appellate courts have jurisdiction to determine whether district court had statutory authority to impose a consecutive sentence even when a defendant receives a presumptive sentence, which is generally not appealable.).

Finally, as discussed below, the Legislature amended K.S.A. 21-6814 in 2022 to establish procedures governing a criminal-history challenge raised for the first time on appeal. K.S.A. 2022 Supp. 21-6814(d). This amendment presumes the existence of appellate court jurisdiction over such challenges. And here, Steinert's criminal-history challenge serves as the foundation for his illegal sentence motion.

We also take issue with the panel's analysis of the preservation rule in the context of an illegal-sentence motion. First, the panel's reliance on *Gray* is misplaced. There, the defendant argued for the first time on appeal that the identical-offense doctrine applied to his first-degree murder conviction. *Gray*, 311 Kan. at 169; see also *State v. Thompson*, 287 Kan. 238, Syl. ¶ 3, 200 P.3d 22 (2009) (when two or more offenses are identical, a person may be sentenced only to the least severe punishment prescribed for any of them). We acknowledged our three well-established exceptions to the preservation rule—see *State v. Godfrey*, 301 Kan. 1041, 1043, 350 P.3d 1068 (2015)—but then made the discretionary decision not to reach the merits. See *Gray*, 311 Kan. at 170 ("The decision to review an unpreserved claim under an exception is a prudential one. Even if an exception would support a decision to review a new claim, we have no obligation to do so. [Citations omitted.]"). The preservation rule applied because the defendant in *Gray* did not raise an illegal-sentence claim. Steinert, on the other hand, did. See *Dickey*, 301 Kan. 1018, Syl. ¶¶ 1, 3 (A challenge to the classification of a prior conviction and the resulting criminal-history score presents an illegal-sentence claim.). And our precedent firmly establishes that a defendant may raise an illegal-sentence claim for the first time on appeal, notwithstanding general rules of issue preservation. See 301 Kan. 1018, Syl. ¶ 1; see also *State v. Eubanks*, 316 Kan. 355, 360, 516 P.3d 116 (2022); *State v. Juiliano*, 315 Kan. 76, 79-80, 504 P.3d 399 (2022) (citing *State v. Sartin*, 310 Kan. 367, 375, 446

P.3d 1068 [2019]; *State v. Johnson*, 309 Kan. 992, 995, 441 P.3d 1036 [2019]). Thus, we disagree with the panel's suggestion that it could have made a discretionary decision to apply the preservation rule to deny Steinert's criminal-history challenge.

B. *The Legal Standard for Remand Is Governed by K.S.A. 2022 Supp. 21-6814(d), not K.S.A. 2022 Supp. 22-3504*

Even so, we disagree with the second part of Steinert's argument—that K.S.A. 2022 Supp. 22-3504 establishes a *Van Cleave*-like procedure for illegal-sentence claims. As we have explained, Steinert grounds his argument in the statutory text. Under K.S.A. 2022 Supp. 22-3504(a), a "defendant shall have a right to a hearing" on an illegal-sentence motion "[u]nless the motion and the files and records of the case conclusively show that the defendant is entitled to no relief." In Steinert's view, the Arkansas journal entry raises a question about whether the conviction should have factored into his criminal-history score, so it cannot be said that the documents of his case conclusively show he is entitled to no relief. Thus, he argues K.S.A. 2022 Supp. 22-3504 entitles him to a remand for a hearing on his motion.

While Steinert's textual argument has some appeal, his interpretation of K.S.A. 2022 Supp. 22-3504 is untenable given the 2022 amendment to K.S.A. 21-6814. Under that amendment, when an offender raises a criminal-history challenge for the first time on appeal, "the offender may provide the appellate court with journal entries of the challenged criminal history," and "[t]he court may remand the case if there is a reasonable question as to whether prejudicial error exists." K.S.A. 2022 Supp. 21-6814(d). In other words, the 2022 amendment to K.S.A. 21-6814 specifically addresses the issue of remand in cases in which a defendant raises a criminal-history challenge for the first time on appeal. And as established in the analysis of Issue II below, the amendment applies to Steinert's challenge even though it became effective a week after the panel's decision.

Thus, even if K.S.A. 2022 Supp. 22-3504(a) could be construed as addressing remand to the district court, K.S.A. 2022 Supp. 21-6814(d) would control as the more specific statute. See *In re Tax Exemption Application of Mental Health Ass'n of the Heartland*, 289 Kan. 1209, 1215, 221 P.3d 580 (2009) (a specific statute controls over a general statute); *Bruce v. Kelly*, 316 Kan. 218, 255, 514 P.3d 1007 (2022) ("[W]hen statutory provisions are in conflict, the more specific provision generally prevails."). K.S.A. 2022 Supp. 22-3504 does not address remand specifically, only a right to a hearing generally. Nor is the statute limited to instances when an illegal-sentence claim is raised for the first time on appeal. K.S.A. 2022 Supp. 21-6814(d), on the other hand, provides a standard for remand precisely in the situation this case presents: Steinert has challenged his criminal history for the first time on appeal and provided the appellate court with a purported journal entry of the challenged criminal history.

Thus, when a criminal-history challenge is raised for the first time on appeal, the legal standard for remand is governed by K.S.A. 2022 Supp. 21-6814(d), rather than K.S.A. 2022 Supp. 22-3504(a).

II. *The 2022 Amendment to K.S.A. 21-6814 Applies Because It Became Effective While Steinert's Direct Appeal Was Pending; but Under the Circumstances, the Contested Legal and Factual Issues Should First Be Resolved in the District Court, Which Has Concurrent Jurisdiction Under K.S.A. 2022 Supp. 21-6820(i).*

As noted, Steinert's several attempts to introduce the Arkansas journal entry into the Court of Appeals proceedings were consistently rebuffed. And when Steinert asked the panel to reconsider or modify its decision based on K.S.A. 2022 Supp. 21-6814(d), the panel denied his motion without analysis.

Now before our court, Steinert continues to insist that K.S.A. 2022 Supp. 21-6814 allows him to submit the Arkansas journal entry to the appellate courts. Under subsection

(d) of that statute, an offender who, like Steinert, challenges criminal history for the first time on appeal "may provide the appellate court with journal entries of the challenged criminal history that were not originally attached to the criminal history worksheet." K.S.A. 2022 Supp. 21-6814(d). Steinert acknowledges the statute came into effect after the Court of Appeals panel denied him relief, but he argues that it nonetheless applies because it is procedural and remedial. See *White v. State*, 308 Kan. 491, 499, 421 P.3d 718 (2018) (statutory amendments that are "procedural or remedial" may be applied retroactively).

Pressed at oral argument on the relief he seeks, Steinert asked us to reach the merits of his illegal-sentence claim and to consider the Arkansas journal entry when doing so. Steinert believes the journal entry can support two, independent illegal-sentence claims. He bases his first illegal-sentence claim on K.S.A. 2022 Supp. 21-6811, which governs the calculation of criminal-history scores. Under one of its provisions, K.S.A. 2022 Supp. 21-6811(e)(2)(B), an out-of-state misdemeanor "shall not be used in classifying the offender's criminal history" if "Kansas does not have a comparable offense." Steinert points out that the purported journal entry alternately lists two Arkansas statutes, Ark. Code Ann. § 5-36-102 and Ark. Code Ann. § 5-36-116, as the statutes he violated. According to Steinert, neither statute provides the elements of a criminal offense, so it is unclear what Arkansas offense Steinert was convicted of, let alone whether a comparable Kansas offense exists.

Steinert then relies on *Youngblood* for his second illegal-sentence claim. There, we held that, because a "person accused of a misdemeanor has a Sixth Amendment right to counsel if the sentence to be imposed upon conviction includes a term of imprisonment," an uncounseled misdemeanor conviction cannot be used to later calculate criminal history unless the person properly waived that right. *Youngblood*, 288 Kan. 659, Syl. ¶¶ 2, 3. Steinert draws our attention to the blank space where the purported journal entry should

have identified the attorney representing him. He contends this omission shows he was not represented by counsel, so the conviction should not have factored into his criminal-history score.

In response, the State insists the document Steinert has provided is not a journal entry but a "record of actions," which merely summarizes the important events in the Arkansas proceedings. And, of course, the State disputes the merits of Steinert's illegal-sentence claims.

We agree with Steinert that K.S.A. 2022 Supp. 21-6814(d) applies to his claim, but not for the same reason he articulates. Steinert contends the amendment applies retroactively because it is procedural and remedial. But "new rules for conducting criminal prosecutions generally apply to cases pending on direct review or not yet final." *State v. Thurber*, 308 Kan. 140, 225, 420 P.3d 389 (2018). And K.S.A. 2022 Supp. 21-6814 became effective while Steinert's direct appeal was pending. Thus, a court's reliance on the statutory amendment does not constitute a retroactive application of the law.

Though we agree K.S.A. 2022 Supp. 21-6814(d) applies to Steinert's direct appeal, that conclusion does not resolve the issues in this case. We have already noted that there is a factual dispute as to whether the document Steinert submitted is, in fact, a journal entry. But it has also become clear that the parties hold differing views regarding the proper interpretation of K.S.A. 2022 Supp. 21-6814(d). For example, the statute allows both the defendant and State to "provide the appellate court with journal entries" that address the defendant's criminal history challenge. K.S.A. 2022 Supp. 21-6814(d). But does that mean a party may submit out-of-state journal entries? And may the parties submit only journal entries? If so, can the court consider and rely on the affidavit Steinert submitted to our court? The statute also permits the appellate court to "take judicial notice of such journal entries, complaints, plea agreements, jury instructions and verdict

forms for Kansas convictions when determining whether prejudicial error exists." K.S.A. 2022 Supp. 21-6814(d). Does that language prevent the appellate court from taking judicial notice of similar documents from out-of-state convictions? And what does it mean for there to be "a reasonable question as to whether prejudicial error exists," which is the statutory standard for remand to the district court? K.S.A. 2022 Supp. 21-6814(d).

To decide whether the documents Steinert submitted are properly before the court, and to reach the merits of Steinert's challenges to the calculation of his criminal-history, an appellate court must resolve these outstanding factual and legal questions. But the parties did not brief the questions related to the proper statutory interpretation of K.S.A. 2022 Supp. 21-6814(d), in part, because they did not take shape until oral argument. And the panel did not address the statutory amendment in its opinion. We hesitate to resolve disputed interpretations of a newly amended statute without the benefit of the parties' briefing or the analysis of the panel.

Given these circumstances, we conclude the district court is better positioned to resolve the claims in Steinert's illegal-sentence motion. Under a newly enacted provision of K.S.A. 21-6820, the district court—in this case, the Sedgwick County District Court—has concurrent jurisdiction over Steinert's illegal-sentence claims. See K.S.A. 2022 Supp. 21-6820(i) ("The sentencing court shall retain authority irrespective of any appeal to correct an illegal sentence or clerical error pursuant to K.S.A. 22-3504."). And that amendment applies for the same reason the 2022 amendment to K.S.A. 21-6814 applies—the statutory amendment became effective while Steinert's direct appeal was pending. See 308 Kan. at 225 (changes in the law, including statutory amendments, generally apply on direct appeal).

Our court has the inherent power to take actions "reasonably necessary for the administration of justice, provided these powers in no way contravene or are inconsistent with the substantive statutory law." *Comprehensive Health of Planned Parenthood v.*

*Kline*, 287 Kan. 372, 419, 197 P.3d 370 (2008); see also Kan. Const. art. 3, § 1 ("The supreme court shall have general administrative authority over all courts in this state."). When, as here, the Legislature has granted district courts concurrent jurisdiction, we have inherent authority to decide which forum should exercise that jurisdiction. And such decision-making is wholly consistent with the concurrent jurisdictional scheme the Legislature contemplated in K.S.A. 2022 Supp. 21-6820(i). For the reasons outlined above, we conclude that the district court is best positioned to adjudicate the parties' fact disputes and to resolve the legal question of whether Steinert's criminal history score deviates from the applicable statutes, rendering his sentence illegal. And we reserve for another day the various questions related to the proper interpretation of K.S.A. 2022 Supp. 21-6814(d).

#### CONCLUSION

For the reasons outlined in this opinion, we reverse the panel's holding denying Steinert's illegal-sentence claim and remand that issue to the district court to exercise its concurrent jurisdiction consistent with this opinion. We deny, as moot, Steinert's motion to add the Arkansas journal entry before our court.

Judgment of the Court of Appeals denying the motion to correct illegal sentence is reversed, and the case is remanded to the district court with directions.