

NOT DESIGNATED FOR PUBLICATION

No. 124,210

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

TERRANCE J. KELLY,
Appellant,

v.

SAM CLINE, et al.,
Appellees.

MEMORANDUM OPINION

Appeal from Butler District Court; JOHN E. SANDERS, judge. Opinion filed June 10, 2022. Appeal dismissed.

Terrance J. Kelly, appellant pro se.

Jocilyn B. Oyler, legal counsel, Kansas Department of Corrections, of Topeka, for appellees.

Before ATCHESON, P.J., POWELL and WARNER, JJ.

PER CURIAM: Terrance J. Kelly has been an inmate in the Kansas correctional system for about 30 years. In November 2019, he filed a habeas corpus petition, under K.S.A. 60-1501, in the Butler County District Court asserting he had been placed in administrative segregation at the El Dorado prison in violation of his constitutional due process rights. The district court denied Kelly any relief, finding he had failed to exhaust his administrative remedies before filing this action.

Kelly has appealed and is representing himself, as he did in the district court. The record on appeal shows that Kelly is now confined at the prison in Hutchinson and is

housed in the general inmate population. Given those circumstances, we find Kelly's underlying claim to be moot. The claim was not stated with great clarity but appears to have been quite fact-bound, based on the materials Kelly appended to his petition. Accordingly, we decline to retain this appeal, since it does not directly address a significant policy or public issue. Nor does it present a recurrent issue that would otherwise evade judicial review. We, therefore, dismiss this appeal.

In light of that disposition, we may dispense with an extended historical or procedural narrative. Kelly was placed in administrative segregation while prison officials investigated his involvement in an alleged scheme to traffic in contraband. At some point, he lodged internal complaints that he was being held in administrative segregation without due cause and the investigative detention had been impermissibly extended. When those complaints yielded nothing, Kelly filed his 60-1501 petition seeking various forms of relief. The district court disposed of the petition on procedural grounds, leading to this appeal.

As we have said, Kelly has been transferred to the prison in Hutchinson and is no longer in administrative segregation. That is undisputed. Because Kelly's petition challenged his placement in administrative segregation and he has been released from that form of detention, the legal dispute appears to be moot, since the placement, even if improper, has ended and a court order to that effect would not change the present legal relationship between Kelly and the Kansas Department of Corrections. See *State v. Montgomery*, 295 Kan. 837, 840-41, 286 P.3d 866 (2012) (controversy becomes moot when judicial resolution of issue would no longer affect legal rights or alter legal relationship of parties); *Burnett v. Spears*, No. 121,766, 2020 WL 2089695, at *1 (Kan. App. 2020) (unpublished opinion). Courts typically do not address issues that have become moot because a ruling would amount to an advisory opinion. See *State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 896-97, 179 P.3d 366 (2008); *In re Care &*

Treatment of Kukovich, No. 114,209, 2016 WL 7031851, at *1 (Kan. App. 2016) (unpublished opinion).

In his appellate brief, Kelly acknowledges and addresses mootness. The Department did not directly respond and principally argued the district court correctly denied relief because Kelly failed to exhaust departmental remedies before filing his 60-1501 action. Both sides have had the opportunity to address mootness, so we may consider the issue. Kelly makes two arguments for our retaining this case. Neither is availing.

First, Kelly says we should construe his 60-1501 petition as a civil action brought under 42 U.S.C. § 1983 (2018), a federal statute providing relief for violations of federal constitutional and statutory rights by agents of state or local governments. Nowhere in his petition did Kelly refer to any federal statutory claim for relief and specifically relied on state habeas corpus. On appeal, Kelly points out both that he requested actual and punitive damages in his petition in addition to injunctive relief and that money damages would be available under 42 U.S.C. § 1983 but not under K.S.A. 2021 Supp. 60-1501. We are unpersuaded that his request for relief beyond the scope of K.S.A. 2021 Supp. 60-1501 converts what is obviously a habeas corpus petition into a federal civil rights action. See *Golden v. Den-Mat Corp.*, 47 Kan. App. 2d 450, Syl. ¶ 3, 276 P.3d 773 (2012) ("A district court should conform the monetary damages to the claims, not the other way around.").

Second, Kelly argues we should fit his claim into one of the narrow exceptions to the mootness doctrine. He contends he has raised issues that are both of public importance and capable of repetition. An appellate court may consider an otherwise moot claim if it involves a matter of broad public interest or concern. Likewise, a court may decide an issue that comes up over and over again but routinely evades judicial review because the legal dispute in a given case tends to end before the appellate process can run

its course. See *Montgomery*, 295 Kan. at 841; *State v. DuMars*, 37 Kan. App. 2d 600, 605, 154 P.3d 1120 (2007).

We are cognizant of the Kansas Supreme Court's admonition that we should carefully examine a case and its constituent issues before dismissing an appeal as moot. *State v. Roat*, 311 Kan. 581, Syl. ¶ 4, 466 P.3d 439 (2020). Nevertheless, as we have indicated, Kelly's underlying dispute with the Kansas Department of Corrections is heavily dependent on the particular facts related to his placement in administrative segregation. We see no overarching issue of great public importance that would be resolved here. And Kelly's claim does not appear to be one that would be repeated yet evade review. Indeed, if Kelly were placed in administrative segregation in the future, he could bring a federal civil rights action to redress a constitutional wrong in that placement. A claim for money damages likely would keep *that* case from becoming moot even if he were returned to the general prison population. See *Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1311 n.4 (10th Cir. 2010) (claim for monetary damages prevented § 1983 action from being moot); *Brown v. Bartholomew Consol. School Corp.*, 442 F.3d 588, 596 (7th Cir. 2006).

Kelly's underlying claim for habeas corpus relief has become moot, so we dismiss this appeal.