

NOT DESIGNATED FOR PUBLICATION

No. 124,392

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

RONALD J. ROBBEN,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Jefferson District Court; CHRISTOPHER T. ETZEL, judge. Opinion filed May 19, 2023. Affirmed.

*Jennifer C. Roth*, of Kansas Appellate Defender Office, for appellant.

*Steven J. Obermeier*, assistant solicitor general, and *Kris W. Kobach*, attorney general, for appellee.

Before BRUNS, P.J., GREEN and WARNER, JJ.

PER CURIAM: Ronald Robben appeals the district court's decision denying his motion for a downward dispositional departure sentence for a conviction under the Kansas Offender Registration Act (KORA). After reviewing the record and the parties' arguments, we find that the district court's denial of Robben's motion was a reasonable exercise of the court's discretion. We thus affirm the district court's decision.

In December 2020, Robben pleaded guilty to attempted aggravated violation of KORA after he failed to register his address. As a result of this plea, the State dismissed

three other felony charges for aggravated violation of KORA. Robben had a criminal history of C, which, combined with the severity level of Robben's crime of conviction, led to a midrange presumptive 57-month prison sentence under the Kansas Sentencing Guidelines. Because he had violated KORA, Robben was also subject to a special sentencing rule, see K.S.A. 2022 Supp. 21-6804(m), stating that the sentence for such a violation was "presumptive imprisonment."

In following months, before sentencing, Robben failed to appear in court several times, and the district court had to issue bench warrants for his arrest. Robben was also convicted of failing to register in Missouri during this time. Despite these shortcomings, Robben requested a downward dispositional departure sentence—in effect, asking that he be allowed to serve a period of probation, rather than a prison sentence.

To support his departure request, Robben argued that he suffered from serious medical issues and had legitimate reasons for missing the earlier hearings, including being hospitalized and having a flat tire. Robben also argued that although his criminal history corresponded to a presumptive prison sentence under the Guidelines, many of his past convictions were over 20 years old or unrelated to his current conviction.

The district court denied Robben's dispositional-departure request, noting that Robben's medical issues would not have prevented him from understanding KORA's registration requirements. The court also noted that Robben had received a favorable plea agreement, leading to a less severe conviction compared to his initial charges. The court did, however, grant a downward durational departure, sentencing Robben to 44 months in prison instead of the presumptive 57-month term under the Guidelines. Robben appeals, arguing that the district court erred by denying his request for a dispositional departure sentence.

Kansas law generally requires a sentencing court to impose the presumptive sentence under the Guidelines, but a court may depart from the presumptive sentence for "substantial and compelling reasons." K.S.A. 2022 Supp. 21-6815(a). A reason is substantial if it is "real, not imagined, and of substance, not ephemeral." *State v. Hines*, 296 Kan. 608, Syl. ¶ 5, 294 P.3d 270 (2013). Even if the sentencing court determines that there are substantial reasons for a departure, the court has broad discretion to determine whether those reasons are compelling—that is, whether the circumstances warrant a different sentence than that presumed by the Guidelines. K.S.A. 2022 Supp. 21-6818(a) ("When a departure sentence is appropriate, the sentencing judge *may* depart from the sentencing guidelines." [Emphasis added.]). In other words, a compelling reason "forces the court, by the facts of the case, to abandon the status quo and to venture beyond the sentence that it would ordinarily impose." 296 Kan. 608, Syl. ¶ 5.

This court will only overturn a sentencing court's denial of a departure request when it abuses its discretion—when its decision is unreasonable or based on a legal or factual error. *State v. Farmer*, 312 Kan. 761, 763, 480 P.3d 155 (2021).

Robben asserts that the decision to deny his dispositional-departure request was unreasonable. We disagree. Between his conviction and sentencing, Robben missed multiple hearings, requiring the district court to issue bench warrants to ensure his appearance. And during this same period, Robben was convicted of failing to register in Missouri, the same crime he had just been convicted of in Kansas. As the district court noted, Robben's main argument supporting a dispositional departure—his health issues—did not explain his failure to register. And Robben's history of missed court appearances and failure to comply with registration requirements did not give the court reason to believe Robben could successfully comply with the terms of probation.

Contrary to Robben's arguments on appeal, our review of the record shows that the district court thoughtfully analyzed Robben's departure request. The district court found

that the reasons Robben provided in his request warranted a durational departure to a 44-month (rather than a 57-month) prison term. But the court did not find that these same arguments warranted a dispositional departure. This decision was a sound exercise of the district court's discretion. And as an appellate court, we may not reweigh these facts. See *State v. Talkington*, 301 Kan. 453, Syl. ¶ 3, 345 P.3d 258 (2015). The district court did not abuse its discretion when it denied Robben's request for a dispositional departure.

Robben raises other arguments on appeal that, he claims, support a dispositional departure. But Robben did not raise these arguments before the district court, so they are not preserved for appellate review. See *State v. Boswell*, 314 Kan. 408, 417, 499 P.3d 1122 (2021). We thus decline to address them.

Affirmed.