

NOT DESIGNATED FOR PUBLICATION

No. 124,906

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

SHEILA MARIE GRAFKE,
Appellant.

MEMORANDUM OPINION

Appeal from Wyandotte District Court; JENNIFER L. MYERS, judge. Opinion filed February 24, 2023. Affirmed.

Submitted by the parties for summary disposition under K.S.A. 2021 Supp. 21-6820(g) and (h).

Before GREEN, P.J., HURST, J., and TIMOTHY G. LAHEY, S.J.

PER CURIAM: Sheila Marie Grafke pleaded guilty to driving under the influence (DUI) of alcohol—third offense, a nongrid severity level 6 nonperson felony in violation of K.S.A. 2021 Supp. 8-1567(a), (b)(1)(D). Grafke also pleaded guilty to theft, a class A nonperson misdemeanor in violation of K.S.A. 2021 Supp. 21-5801(a)(1), (b)(4), and endangerment, a class A person misdemeanor in violation of K.S.A. 2021 Supp. 21-5429.

Because Grafke committed the preceding crimes, her probation in her three other criminal cases was revoked. This meant that Grafke had to serve her underlying 23-month prison sentence for those crimes.

At sentencing, Grafke and the State addressed Grafke's 23-month prison sentence for her prior crimes. In short, because Grafke was already serving a 23-month prison sentence, they asked the trial court to not impose additional jail time on Grafke for her third DUI, theft, and endangerment convictions. Rather, they wanted the trial court to impose jail sentences on Grafke equal to the time that she had already spent in jail on her third DUI, theft, and endangerment convictions. But after discussing Grafke's criminal history, the trial court refused Grafke's and the State's request. Although it ran Grafke's third DUI, theft, and endangerment sentences concurrent, the trial court sentenced Grafke to 12 months' jail time for each conviction. And it ordered Grafke to serve this jail time consecutively to her 23-month prison sentence.

Grafke timely appealed her third DUI, theft, and endangerment sentences. But after doing so, Grafke moved for summary disposition under Kansas Supreme Court Rule 7.041A (2022 Kan. S. Ct. R. at 48), which this court granted. In her summary disposition motion, Grafke contends that the trial court abused its discretion when it rejected her and the State's request to impose jail sentences that were equal to the time she had already spent in jail. Nevertheless, at the same time, she recognizes that her position contradicts prevailing precedent. The State has not responded to Grafke's summary disposition motion.

In *State v. Chetwood*, 38 Kan. App. 2d 620, 624, 170 P.3d 436 (2007), this court explained that a trial court is "not bound by plea agreements or sentencing recommendations." Instead, the trial court "may impose a sentence independent of any agreement or recommendations of the parties." 38 Kan. App. 2d at 624-25. So, the fact that the trial court rejected Grafke's and the State's sentencing request, in and of itself, does not prove that the trial court abused its discretion. Additionally, a trial court abuses its discretion only when it commits an error of law, commits an error of fact, or makes an otherwise unreasonable decision. *State v. Levy*, 313 Kan. 232, 237, 485 P.3d 605 (2021).

For her third DUI, theft, and endangerment sentences, though, the trial court imposed standard 12-month jail sentences upon Grafke. See K.S.A. 2021 Supp. 8-1567(b)(1)(D) (stating that the trial court may impose up to a 12-month jail sentence for a third DUI conviction); K.S.A. 2021 Supp. 21-6602(a)(1) (stating that the trial court may impose up to a 12-month jail sentence for class A misdemeanors). As a result, it follows that the trial court did not abuse its discretion when it sentenced Grafke for her third DUI, theft, and endangerment convictions.

Affirmed.