

NOT DESIGNATED FOR PUBLICATION

No. 125,265

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

DAVID G. STRINGER,
Appellant,

v.

STATE OF KANSAS,
Appellee.

MEMORANDUM OPINION

Appeal from Wyandotte District Court; WESLEY K. GRIFFIN, judge. Opinion filed August 4, 2023. Affirmed.

David G. Stringer, appellant pro se.

Francis X. Altomare, assistant district attorney, *Mark A. Dupree Sr.*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

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

PER CURIAM: David G. Stringer appeals the district court's summary denial of his pro se K.S.A. 60-1507 motion challenging the legal authority of the Kansas Parole Board to impose lengthy postrelease supervision. The district court summarily denied Stringer's 60-1507 motion after determining it was not the appropriate procedure to challenge the Parole Board's action. Rather, Stringer should have filed an action under K.S.A. 60-1501. Even if the district court had liberally construed Stringer's pro se motion as an action for relief under K.S.A. 60-1501—the appropriate mechanism for challenging the Parole

Board's action—Stringer's motion would still lack a remedy because it is untimely. The district court's summary denial of Stringer's motion is therefore affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

Stringer's pro-se K.S.A. 60-1507 motion and the record on appeal lack explanation and verification of his complicated pre-2005 criminal history. However, the record contains the following facts which sufficiently form the basis to decide this matter.

About 40 years ago in 1983 Stringer pled guilty to three counts of aggravated robbery in Wyandotte County District Court and was sentenced to a controlling prison term "of not less than seven (7) nor more than twenty (20) years." In 1987, while serving that sentence, Stringer escaped from custody at the El Dorado Honor Camp and traveled to Leavenworth, Kansas, where he again committed aggravated robbery. The following month, Stringer was apprehended in Nevada after committing a robbery there. Stringer was subsequently convicted and sentenced for a Nevada robbery before being returned to Kansas in 1988 to continue serving his sentence here. Thereafter, Stringer was sentenced for the two counts of aggravated robbery he committed in Leavenworth following his escape from custody in 1987. Later that year, Stringer was sent back to Nevada to serve his sentence there, where he remained until 2005.

In 2005, Stringer was released from prison and sent back to Wyandotte County, Kansas, to serve his Nevada parole. In December 2008 Stringer was taken into custody and transported to Lansing Correctional Facility ostensibly in relation to his escape from custody in 1987. Later that week, on December 19, 2008, Stringer was released on postrelease supervision. Stringer signed a certificate of release stating that he "shall be under the jurisdiction of the Kansas Parole Board and the Secretary of Corrections until expiration of the period of post release supervision, plus the amount of good time credits earned and retained by the inmate, to wit: 06/05/2024."

Over 13 years later, on March 3, 2022, Stringer filed the pro se K.S.A. 60-1507 motion at issue in this appeal seeking termination of his lengthy postrelease supervision, arguing the Parole Board acted unlawfully. Stringer also sought to recover expenses he allegedly incurred in relation to his postrelease supervision. Approximately two weeks later, the district court summarily denied the motion, reasoning that it lacked jurisdiction because Stringer should have filed his action pursuant to K.S.A. 60-1501 in Reno County, not Wyandotte County. The court explained:

"Stringer's K.S.A. 60-1507 is an improper method of challenging the parole board rulings. A motion pursuant to K.S.A. 60-1501 must be filed in the jurisdiction where he is confined. This Plaintiff states that he is on parole—and thus legal custody—in Reno [C]ounty. Jurisdiction for a challenge to the actions of the parole board would be in that jurisdiction.

"Based on the case law and arguments above, the current motion pursuant to K.S.A. 60-1507 is denied."

Stringer appeals.

DISCUSSION

The district court has the following three options when evaluating and disposing of a K.S.A. 60-1507 motion: (1) summarily deny a motion when it and the case files and records conclusively show the movant is not entitled to relief; (2) hold a preliminary hearing if the motion and records show that a potentially substantial issue exists; or (3) hold a full hearing if the records and motion present a substantial issue. *State v. Adams*, 311 Kan. 569, 578, 465 P.3d 176 (2020). This court's standard of review turns on which of these options the district court adopted. 311 Kan. at 578. When, as here, the district court summarily denies the motion, this court conducts a de novo review to determine whether the motion, files, and records of the case conclusively establish that the movant

is not entitled to relief. K.S.A. 2022 Supp. 60-1507(b); *Beauclair v. State*, 308 Kan. 284, 293, 419 P.3d 1180 (2018).

As the district court correctly explained, the Kansas Supreme Court has long held that the "provisions of K.S.A. 60-1507 do not provide a method for inquiring into the propriety of the acts of the Kansas Board of Probation and Parole." *Foor v. State*, 196 Kan. 618, 620, 413 P.2d 719 (1966). The district court therefore did not err in holding that it lacked jurisdiction because "[a]n action brought under K.S.A. 60-1507 is not the appropriate procedure to challenge decisions of the Kansas Parole Board." *State v. Bookless*, 23 Kan. App. 2d 730, Syl., 935 P.2d 231 (1997). Rather, Stringer's challenge to the Kansas Parole Board's action should have been filed under K.S.A. 60-1501. *State v. Buford*, 307 Kan. 73, 74, 405 P.3d 1194 (2017). However, when considering a pro se pleading the district court should avoid adhering to labels and headings, but rather liberally construe the pleading "to give effect to the pleading's content rather than the labels and forms used." *State v. Hill*, 311 Kan. 872, Syl. ¶ 3, 467 P.3d 473 (2020).

This court exercises unlimited review over "[w]hether the district court correctly construed a pro se pleading." *Hill*, 311 Kan. 872, Syl. ¶ 3. It appears the district court contemplated liberally construing Stringer's pro se motion as an action under K.S.A. 60-1501, but ultimately declined to do so because Stringer filed the motion in the wrong county. Had Stringer filed his action under 60-1501, it would have needed to be filed in the county in which he was restrained—Reno County rather than Wyandotte County. See K.S.A. 2022 Supp. 60-1501(a); *Denney v. Norwood*, 315 Kan. 163, 173, 505 P.3d 730 (2022). The only Kansas district court with jurisdiction to issue the writ of habeas corpus Stringer sought is the district court where he is restrained—Reno County District Court. Accordingly, even liberally construing Stringer's pro se action under K.S.A. 60-1501 would not have allowed the district court to reach the merits of the motion. This court could therefore affirm the district court's summary denial of Stringer's motion on this

basis. See *Douglas v. State*, No. 114,828, 2016 WL 5867242, at *1-3 (Kan. App. 2016) (unpublished opinion).

However, the most appropriate and judicially economical approach would have been for the district court to have liberally construed Stringer's pro se motion as a proceeding pursuant to K.S.A. 60-1501 and then transferred the case to the proper venue—Reno County District Court. See *Johnson v. Zmuda*, 59 Kan. App. 2d 360, Syl. ¶ 3, 481 P.3d 180 (2021) ("The proper course for a district court when faced with a K.S.A. 60-1501 petition filed in the wrong county—i.e., the improper venue—is to transfer the case to the district court in the county where the petitioner is being confined."). Under different circumstances, this court would consider reversing the district court's summary denial of Stringer's motion to remand the case with directions that the district court transfer it to Reno County District Court. See 59 Kan. App. 2d at 366.

However, such an action would be futile under these circumstances. This court's de novo review of the motion, files, and records of the case reveals that under the broadest of constructions Stringer's motion is procedurally defective as it is untimely. K.S.A. 2022 Supp. 60-1501(b). Even assuming Stringer's motion were appropriately construed under 60-1501, he was required to file it within 30 days from the date the challenged action was final. K.S.A. 2022 Supp. 60-1501(b). Stringer was released under the now-objected-to terms of his lengthy postrelease supervision on December 19, 2008, giving him only until January 18, 2009, to file an action pursuant to 60-1501. Stringer filed his motion in March 2022—over 13 years past the deadline. While the filing deadline can be tolled during the movant's pursuit of timely administrative remedies, nothing in the record demonstrates that Stringer has spent over a decade seeking to exhaust his administrative remedies. See K.S.A. 2022 Supp. 60-1501(b) (The "time [to file] is extended during the pendency of the inmate's timely attempts to exhaust such inmate's administrative remedies."). Accordingly, even if the district court had liberally

construed Stringer's pro se motion under K.S.A. 60-1501 and then transferred the motion to the appropriate district court, that district court should have still summarily denied the motion as untimely.

The motion, files, and records of the case conclusively establish that Stringer is not entitled to relief and the district court did not err in summarily denying Stringer's motion. While the district court summarily denied the motion under reasoning that differs from that of this court, it nevertheless reached the correct result. See *Gannon v. State*, 302 Kan. 739, 744, 357 P.3d 873 (2015) ("If a trial court reaches the right result, its decision will be upheld even though the trial court relied upon the wrong ground or assigned erroneous reasons for its decision."). The district court's summary denial of Stringer's motion is therefore affirmed.

Affirmed.