NOT DESIGNATED FOR PUBLICATION

No. 125,335

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

KEVIN MARK HARDING,
Appellant.

MEMORANDUM OPINION

Appeal from Ford District Court; ANDREW STEIN, judge. Opinion filed September 29, 2023. Affirmed.

Grace E. Tran, of Kansas Appellate Defender Office, for appellant.

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

Before ARNOLD-BURGER, C.J., GREEN and HILL, JJ.

PER CURIAM: After entering a no contest plea to one count of possession of methamphetamine with intent to distribute, in violation of K.S.A. 2019 Supp. 21-5705(a)(1), Kevin Mark Harding moved to withdraw his plea before sentencing. The district court denied Harding's motion after finding he had not shown good cause to withdraw his plea. Harding now appeals, raising two issues. First, Harding argues the district court abused its discretion in denying his presentence motion to withdraw his plea. Second, Harding contends his conviction should be reversed because the district court failed to advise him of his right to a jury trial or secure a waiver of that right on the

record. After carefully considering the issues presented, we find no reversible error based on the claims he makes on appeal. Accordingly, we affirm.

FACTUAL AND PROCEDURAL HISTORY

The underlying facts are not necessary to decide this appeal. The State charged Harding in what we will term Case No. 1 with felony counts of possession of methamphetamine with intent to distribute, possession of drug paraphernalia, possession of marijuana, and a misdemeanor count of possession of drug paraphernalia for an incident that occurred in June 2020. The district court found probable cause to bind over Harding on the charges. The district court held an arraignment hearing and accepted Harding's not guilty plea. During this hearing, the court advised Harding that "by entering a not guilty plea, this matter will be set for a trial at a later date, at which time you will have the right to exercise all the rights that accompany the right to trial."

Harding's attorney moved to suppress which was denied after an evidentiary hearing.

The parties enter a plea agreement.

The district court later held a consolidated hearing on three pending cases involving Harding. The State began the hearing by announcing that the parties had come to a plea agreement to resolve all three cases and proceed to a re-arraignment in Case No. 1. Harding's new appointed attorney, Natalie Randall agreed, indicating that Harding would be pleading no contest and stated "[t]hat is a registration offense, so we will fill out the Notice of Duty to Register today." Randall also said the State would be dismissing the other two cases with prejudice (Cases 2 and 3). The court asked Randall, "Do we need to go through waiver in [Case No. 1] again?" Randall responded, "I don't think we need to."

When the prosecutor questioned whether the State could bring the charges in Cases 2 and 3 back "if there is a violation," Randall explained that "cases are always dismissed with prejudice according to the plea agreement. If the plea agreement is undone, everything is undone, including the with prejudice part." Randall's response prompted Harding to ask her if "[t]hey can bring it back up?" A portion of their conversation was captured on the record, during which Randall said, "Yes, correct. But, you're not going to violate."

The district court asked Harding if he understood the charge being brought against him—"[p]ossession of methamphetamine with intent to distribute, a level two felony if the quantity was at least 3.5 grams but less than 100 grams"—and if he had any questions about that charge. Harding responded that he understood the charge. Next, the court advised Harding "that you could be housed in the Department of Corrections for a maximum of 144-months to a minimum of 92-months, that you could earn up to 50 percent good time, and post-release of 36-months, and probation of 36-months." Randall responded that he understood. The court asked Harding if he was waiving his right to a jury trial and Harding answered, "Yes."

The district court then explained that Harding had three plea options available to him:

> "You could plead not guilty. This would go to trial.
>
> "Ms. Randall would assist you at trial. You could cross examine all witnesses brought against you. You can subpoena witnesses to testify on your behalf, and you could testify on your own behalf if you wish to do so. You could also appeal trial errors to the next highest court.
>
> "You could plead guilty, which you make a formal statement the charge is true and that you committed it. There would be no trial.

"You can also plead no contest. If you do that, you do not make a statement that the charge is true and that you committed it, but you're not going to contest the charges. Again, there would be no trial."

The district court asked if Harding had any questions about the plea options, and Harding responded, "No." The court asked Harding how he wished to plead, and Harding responded, "No contest." The following colloquy occurred:

"THE COURT: Are you doing that freely and voluntarily?

"THE DEFENDANT: Yes, sir.

"THE COURT: Do you feel forced or threatened?

"THE DEFENDANT: No, sir.

"THE COURT: Are you under the influence of any drugs, alcohol, or medication today?

"THE DEFENDANT: No.

"THE COURT: Clear mind, understand what we're doing?

"THE DEFENDANT: Yes.

"THE COURT: Were you promised anything other than the plea agreement to make that plea?

"THE DEFENDANT: No."

The State then proffered the factual basis for the plea, to which Randall responded, "No comment, Your Honor." The district court found there was a factual basis to establish the charge, accepted Harding's plea, and found him guilty. The court announced it would dismiss the remaining charges without prejudice, then advised Harding he would need to register. Randall asked for clarification on the dismissal "without prejudice," prompting the court to apologize that it misspoke and corrected to a dismissal with prejudice.

After the district court ordered a presentence investigation (PSI) report, the prosecutor asked to "put on record that Mr. Harding understands, that even though this

would be the joint recommendation of the parties, that the sentencing judge is still free to decide to do something different (unintelligible) understand what that means as far as the plea agreement goes." When the court asked Harding if he had questions about what the prosecutor had said, he responded, "No."

Randall then said, "Also, I think we made this clear once already, but the conditions for him to get the sentencing recommendation from the State will involve no new bond violations and no violations of the plea agreement between now and sentencing, so . . . ." When the court asked if Harding had any questions about that, he responded, "No."

The prosecutor next asked, "Did we put on the record exactly what the recommendations are?" and Randall responded, "No." The following exchange occurred:

> "[Prosecutor]: So, the joint recommendation at sentencing will be that the parties will agree to a durational departure on Count One to 48-months, to include time he has already served in jail, that he would also be required to register for the standard amount of time.
>
> "However, that if Mr. Harding does violate any condition of bond, or fails to appear at any future court hearings or bond appearances, the State is no longer bound by their plea agreement and may ask to go after a higher amount for this charge, or bring back and file the cases that were dismissed today, as well as the charges.
>
> "THE COURT: I apologize for not letting you put that on prior to the re-arraignment . . . .
>
> "MS. RANDALL: Okay.
>
> "THE COURT: Any issues with that, Mr. Harding?
>
> "THE DEFENDANT: No, sir."

Before closing the hearing, the district court clarified that all of Harding's prior bond conditions would remain, with the additional requirement that he cooperate with the

PSI. Following the hearing, Harding moved for a durational departure in line with the joint sentencing recommendations.

Harding moves to withdraw his plea before sentencing.

Following the plea hearing, the district court scheduled a sentencing hearing to occur in January 2022. Although not directly relevant to the issues presented in this appeal, the prosecutor revealed at that hearing that Harding had been arrested and was presently in custody pending new drug possession charges. As a result, the State believed Harding had violated his bond conditions and asked the court to revoke the plea agreement and to sentence Harding to the maximum possible sentence. The parties agreed to a continuance so the district court could hold an evidentiary hearing on whether Harding had violated his bond, and therefore, the plea agreement. Later that same day, the State moved to revoke Harding's bond and filed an accompanying affidavit, which alleged Harding had been arrested for possession of methamphetamine, possession of drug paraphernalia, and transporting an open container in the other case (Case No. 4).

In March 2022, Harding moved to withdraw his plea, claiming he did not fully understand his plea agreement. The district court allowed Randall to withdraw as counsel because she would be a necessary witness on the motion and appointed Louis Podrebarac as Harding's new counsel.

The district court took up both issues at the preliminary hearing for the new drug possession charges (Case No. 4) in June 2022. To begin, the State presented testimony from the officer who arrested Harding in Case No. 4 and based on his testimony, the court found probable cause existed to bind Harding over on the charge of possession of methamphetamine. Based on the same evidence, the State asked the district court to find Harding had violated his bond in Case No. 1 and to release the State from the plea agreement. Podrebarac argued the evidence presented by the State did not satisfy a

preponderance of the evidence standard, which would be the standard of proof for establishing a bond violation. The court disagreed, finding the State had met its burden to show that Harding had violated bond by possessing methamphetamine and released the State from the terms of the plea agreement.

Podrebarac then called Harding as a witness in support of the motion to withdraw plea. Harding testified that he told Randall that he believed he was not adequately represented by his previous attorney, Bryce Haverkamp, on the suppression motion and about his desire to have another suppression hearing. Randall told him he could not have another suppression hearing and would have to appeal that issue from jail. When she approached Harding with the plea offer, they only spoke for "a few minutes . . . about a half-hour" while he was in holding before the hearing. Randall told Harding it was the "best thing" for him, so he felt like taking the plea was his only option. Harding said he told Randall he was not comfortable taking the plea, but she did not really respond to that. Harding believed dismissing the other charges with prejudice meant the State could not refile them. Harding remembered hearing the judge say he could earn "up to 50 percent good time" at the plea hearing, but someone else later told him it was 15 percent.

The State presented testimony from Randall, who said she remembered speaking with Harding about the suppression hearing. She "absolutely" did not tell Harding he would have to appeal the suppression issue from jail. Randall denied telling Harding that he could not have another suppression hearing. Randall said she would have gone forward to file another motion if he had "demanded it," but she did not suggest filing one "because I did not think there was any there there (sic)."

Randall recalled meeting or speaking with Harding by phone or video "about a half dozen times" about plea offers. In one meeting about a month before the agreement, Harding had reservations about accepting a plea offer and wanted more time to think about it. Randall described Harding as a "moving target" who changed his mind between

entertaining a plea deal and refusing. About two weeks before the plea hearing, Harding had communicated to her that he wanted to accept the plea offer. Randall said Harding never told her he felt forced to accept the offer and denied telling him that he had no other option. On the day of the plea hearing, Harding expressed that he was unhappy with the available options.

Randall said she usually encouraged clients, specifically Harding, to consider plea offers if they were better than other options. Randall recalled discussing the term about violating bond conditions with Harding because there had been "a lot of bond problems throughout the pendency of the cases." She even suggested at one point that he not post bond, but Harding "was very, very adamant that he wanted out of jail." Harding did not contact Randall again after entering the plea agreement until he was in custody on the new charges.

Randall remembered discussing the good time credit with Harding "multiple times, as we were doing mathematics to determine the actual time he would have left to serve." She did not hear the judge say Harding could receive up to 50 percent good time credit and would have corrected him if she thought she heard him say that. Randall said, "[I]t was never within the realm of reasonability . . . that 50 was on the table." As for the dismissal of the charges, Randall recalled Harding wanting the charges dismissed with prejudice, but she advised him that they could be brought up again if he violated the plea agreement.

After considering this testimony and the parties' arguments, the district court denied Harding's motion to withdraw his plea. The court began its ruling by noting that Kansas courts evaluate whether there is good cause to withdraw a plea under K.S.A. 22-3210 using the factors from *State v. Edgar*, 281 Kan. 30, 127 P.3d 986 (2006). The court found that Harding had expressly waived his right to a jury trial and that the transcript from the plea hearing showed the court had reviewed the consequences of entering the

plea with him. As for Harding's concern about a second suppression motion, the court observed:

> "Ms. Randall testified that they discussed the wisdom of filing another motion. And, the Court finds that that option was adequately available and presented to the Defendant, but was discouraged by the attorney.
>
> "This is different than the attorney specifically coercing or otherwise misinforming the Defendant that he does not have the option."

The district court also explained that the confusion about the amount of good time credit "may have been something that the transcriptionist misheard or was not clearly spoken by the Court." But based on Randall's testimony about going through mathematical calculations, the court found Harding was "well-aware of the credit and the potential time that he was going to be serving." The court found that Harding was "well-aware" that the sentencing recommendations hinged on him having no bond violations and that "although not advised by the Court or the State until after the plea had entered," Randall had placed that information on the record. As a result, the court found Harding was "represented by competent counsel," that he was not "mislead [*sic*], coerced, mistreated, or unfairly taken advantage of in entering the plea," and that "the plea was fairly and understandingly made in light of all the evidence that was presented about the information available to the Defendant and given to the Defendant by his attorney and other sources in the court system."

Following its ruling on the plea withdrawal motion, the district court proceeded to sentencing. After finding Harding's criminal history score to be an A, the court denied the motion for a durational departure. The court imposed a sentence of 130 months in prison—the low number in the presumptive grid box for the offense.

Harding timely appealed.

ANALYSIS

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING HARDING'S MOTION TO WITHDRAW HIS PLEA

Harding argues the district court abused its discretion in denying his motion to withdraw his plea. Harding contends there was good cause to withdraw his plea because Randall did not provide competent counsel and because he did not understand the terms of the plea agreement. The State responds that the district court's decision to deny Harding's motion was proper because he failed to show good cause. This court agrees with the State and finds no abuse of discretion.

As both parties note, appellate courts review a district court's decision to deny a motion to withdraw a guilty or no contest plea for an abuse of discretion. See *State v. Frazier*, 311 Kan. 378, 381, 461 P.3d 43 (2020). "A judicial action constitutes an abuse of discretion if (1) it is arbitrary, fanciful, or unreasonable; (2) it is based on an error of law; or (3) it is based on an error of fact." *State v. Levy*, 313 Kan. 232, 237, 485 P.3d 605 (2021). Appellate courts review a district court's factual findings in support of a ruling on a motion to withdraw plea for substantial competent evidence. *State v. Johnson*, 307 Kan. 436, 443, 410 P.3d 913 (2018). But appellate courts will not reweigh evidence or reassess witness credibility. *State v. Bilbrey*, 317 Kan. 57, 63, 523 P.3d 1078 (2023). As the party asserting error, Harding bears the burden to prove the district court abused its discretion in denying the motion to withdraw his plea. *State v. Hutto*, 313 Kan. 741, 745, 490 P.3d 43 (2021).

Under K.S.A. 2022 Supp. 22-3210(d)(1), a defendant may withdraw their guilty or no contest plea at any time before sentencing "for good cause shown and within the discretion of the court." When assessing good cause, district courts generally look to a list of nonexclusive factors from *Edgar*, 281 Kan. at 36, which include: (1) whether the

defendant was represented by competent counsel; (2) whether the defendant was misled, coerced, mistreated, or unfairly taken advantage of; and (3) whether the plea was fairly and understandingly made. *Frazier*, 311 Kan. at 381. These factors should not "be applied mechanically and to the exclusion of other factors." *State v. Fritz*, 299 Kan. 153, 154, 321 P.3d 763 (2014).

Harding was represented by competent counsel.

Harding contends the first *Edgar* factor supports a showing of good cause here. As he notes, a district court assessing the competence of counsel on a presentencing motion to withdraw plea applies a "'lackluster advocacy'" standard. See *State v. Herring*, 312 Kan. 192, 198, 474 P.3d 285 (2020). Lackluster advocacy is a lower standard than the Sixth Amendment constitutional ineffective assistance standard. See *State v. Aguilar*, 290 Kan. 506, 513, 231 P.3d 563 (2010) ("It is neither logical nor fair to equate the lesser K.S.A. 22-3210[d] good cause standard governing a presentence plea withdrawal motion to the high constitutional burden. . . . Merely lackluster advocacy . . . may be plenty to support the first *Edgar* factor and thus statutory good cause for presentence withdrawal of a plea."). No Kansas caselaw provides an exact meaning of lackluster advocacy, but the Kansas Supreme Court has noted that the dictionary definition of "'lackluster'" means "'lacking energy or vitality; boring; unimaginative, etc.'" *Herring*, 312 Kan. at 201.

Harding claims Randall's advocacy was lackluster because she "fail[ed] to present an option to a client on an issue that the client is very concerned about," referring to his testimony that she allegedly told Harding he could not have another suppression hearing and would need to appeal the suppression issue from jail. Yet, Harding also notes—and the record confirms—that Randall refuted his statements, explicitly denying that she told Harding he would have to appeal the suppression issue from jail or that he could not have another suppression hearing. This court's standard of review prevents reweighing evidence or reassessing witness credibility. Contrary to Harding's assertion in his brief,

the district court resolved this conflicting testimony by finding that Randall had "discouraged" filing another suppression motion but had not "specifically coerc[ed] or otherwise misinform[ed] the Defendant that he does not have the option." Although the district court did not explicitly say Randall's testimony was more credible, relying only on her testimony recollecting their conversations when making a factual finding is an indicator of credibility.

Harding claims no other aspect of Randall's representation was lackluster, particularly regarding his decision to enter the no contest plea. As a result, he fails to demonstrate the district court abused its discretion in finding that Randall provided competent counsel.

Harding understood the consequences of entering his no contest plea.

Harding also asserts under the third *Edgar* factor that his plea was not understandingly made because the terms of the plea agreement—particularly the sentencing recommendations and registration requirements—were not put on the record until after he had entered the plea. He also asserts that the district court mistakenly told him he could earn up to 50 percent good time credit when explaining the minimum and maximum penalties.

Beginning with Harding's complaint about the amount of good time credit, Harding overlooks that the district court made a factual finding resolving any conflicting testimony on that point. In particular, the court noted that Randall's testimony suggested the transcriptionist either misheard the court or the court misspoke when it stated that Harding was eligible for 15 percent good time credit. More importantly, the court found that Harding was "well-aware of the credit and the potential time that he was going to be serving" because Randall had testified that they had calculated the actual time using the correct amount. The State also points out that Harding admitted "they told me it was 15

percent." Again, this court will not reweigh evidence or reassess witness credibility, but, in any event, there is substantial competent evidence in the record showing that Harding understood this aspect of his plea agreement.

As for the sentencing recommendations not being placed on the record before Harding entered his plea, the State contends "there is no requirement in K.S.A. 2022 Supp. 22-3210(a), which governs pleas of no contest, that the plea agreement be stated on the record prior to the entry of the plea." The State's assertion is suspect, since K.S.A. 2022 Supp. 22-3210(a) lists several pieces of information that must be provided by the district court "[*b*]*efore* or during trial a plea of guilty or nolo contendere *may be accepted*. . . ." (Emphases added.) Relevant to this appeal, the court must

> "(2) . . . inform[] the defendant of the consequences of the plea, including the specific sentencing guidelines level of any crime committed on or after July 1, 1993, and of the maximum penalty provided by law which may be imposed upon acceptance of such plea; and
>
> "(3) . . . address[] the defendant personally and determine[] that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea[.]" K.S.A. 2022 Supp. 22-3210(a).

Although Harding is correct that the transcript from the plea hearing shows some aspects of the joint sentencing recommendations were not explained on the record before the district court accepted his plea, any error can be considered harmless if a review of the entire record shows that the defendant was advised of the consequences of entering the plea by defense counsel or in some other way. See *Johnson*, 307 Kan. at 445; *State v. White*, 289 Kan. 279, Syl. ¶ 8, 211 P.3d 805 (2009).

Here, the record contains substantial competent evidence that Harding understood all the consequences before he entered the plea. At the beginning of the plea hearing,

Randall explained to the district court that Harding would be pleading no contest to "a registration offense" in Case No. 1 and "will fill out the Notice of Duty to Register today." During a discussion between the attorneys and the court about whether the remaining cases would be dismissed with or without prejudice, Randall confirmed with Harding that any violations of the plea agreement on his part would undo the agreement. After confirming that Harding understood the charge, the district court asked if he understood "that you could be housed in the Department of Corrections for a maximum of 144-months to a minimum of 92-months, that you could earn up to 50 percent good time, and post-release of 36-months, and probation of 36-months." The district court also asked if Harding was waiving his right to a jury trial, then explained the three pleas available to him. All of this occurred before Harding said he would plead no contest. The State then set forth the factual basis for the plea, which the district court accepted and found Harding guilty.

Harding complains about what happened after the district court accepted his plea, which is that the prosecutor asked to make it clear that Harding understood the court would not be bound by the parties' joint sentencing recommendations, which also caused the attorneys to realize nobody had mentioned that the State agreed to recommend a departure contingent on Harding committing no further bond violations. Yet Harding confirmed he understood these consequences as well when the district court asked if Harding had any "questions" or "issues," indicating he understood. In addition, Randall testified at the plea withdrawal hearing that she advised Harding multiple times about plea offers during her representation. Although she knew Harding was "unhappy" on the day of the plea hearing, he ultimately agreed to accept the plea deal. Randall also testified about calculating the time Harding would have to serve with him and how they had discussed the condition about bond violations. Although Harding said he felt forced into accepting the plea agreement, he also admitted that he understood it. In short, the record demonstrates that Harding was aware of the consequences of entering his plea.

As a final point, the arguments Harding makes on his jury trial waiver claim could also suggest his plea was not fairly and understandingly made. See *State v. Calel*, No. 118,909, 2019 WL 985454, at *6 (Kan. App. 2019) (unpublished opinion) (finding good cause to withdraw plea where magistrate judge described aspects of jury trial but failed to explain defendant's right to a jury trial before accepting a waiver). Yet Harding makes no attempt to argue that the adequacy of the district court's explanation of the right to a jury trial constitutes good cause to withdraw his plea, and this court need not address arguments that are not raised by the parties. See *State v. Davis*, 313 Kan. 244, 248, 485 P.3d 174 (2021) (issues not briefed are abandoned). He presents his argument related to his jury trial waiver as an independent basis to reverse his conviction, not withdraw his plea and have a jury trial or a valid waiver.

For these reasons, we find Harding fails to meet his burden of showing the district court abused its discretion in concluding there was not good cause to withdraw his plea.

II. WE LACK JURISDICTION TO DETERMINE HARDING'S JURY TRIAL WAIVER CLAIM OUTSIDE OF A PROCEEDING UNDER K.S.A. 60-1507

Harding separately and independently contends his conviction should be reversed because the district court never personally advised him of his right to a jury trial or secured a waiver of that right on the record. But the State aptly challenges our jurisdiction to consider this claim outside the context of a K.S.A. 60-1507 motion.

Whether jurisdiction exists is a question of law subject to unlimited review. *State v. Lundberg*, 310 Kan. 165, 170, 445 P.3d 1113 (2019). The right to appeal is entirely statutory, so Kansas appellate courts only have jurisdiction to entertain an appeal under certain circumstances prescribed by statute. *State v. Smith*, 311 Kan. 109, 112, 456 P.3d 1004 (2020).

Under K.S.A. 2022 Supp. 22-3602(a), a criminal defendant may appeal as a matter of statutory right from any judgment against him and may seek review of "any decision of the district court or intermediate order made in the progress of the case . . . ." Yet the statute adds:

> "No appeal shall be taken by the defendant from a judgment of conviction before a district judge upon a plea of guilty or nolo contendere, except that jurisdictional or other grounds going to the legality of the proceedings may be raised by the defendant as provided in K.S.A. 60-1507, and amendments thereto." K.S.A. 2022 Supp. 22-3602(a).

Harding's conviction resulted from a nolo contendere or no contest plea.

> "'A plea of nolo contendere, when accepted by the court, becomes an implied confession of guilt, and, for the purposes of the case, equivalent to a plea of guilty; that is, the incidents of the plea, so far as the particular criminal action in which the plea is offered is concerned, are the same as on a plea of guilty.' 21 Am. Jur. 2d, Criminal Law § 497. In *State v. Browning*, 245 Kan. 26, 32, 774 P.2d 935 (1989), the court stated, 'A nolo contendere plea has essentially the same consequences as a guilty plea.' Like a guilty plea, entry of a nolo contendere plea results in the accused waiving all formal defects which are nonjurisdictional. 21 Am. Jur. 2d, Criminal Law § 498." *In re Habeas Corpus Application of Coulter*, 18 Kan. App. 2d 795, 797, 860 P.2d 51, 54 (1993).

An accused who voluntarily enters a guilty plea waives any defects or irregularities in any of the prior proceedings, even if such defects "'may reach constitutional dimensions.'" *State v. Coman*, 294 Kan. 84, 90, 273 P.3d 701 (2012) (quoting *State v. Melton*, 207 Kan. 700, 713, 486 P.2d 1361 [1971]).

Although K.S.A. 2022 Supp. 22-3602(a) prohibits appeals from no contest pleas it does allow defendants to appeal on "grounds going to the legality of the proceedings" as provided in K.S.A. 60-1507. In *Smith*, our Supreme Court determined that the only reasonable way to read the statute to capture the Legislature's intent would be to prohibit

appeals from guilty or no contest pleas but allow "'prisoner[s] in custody'" to file motions under K.S.A. 60-1507 and appeal rulings on that motion. 311 Kan. at 115. In so doing, the Supreme Court explicitly rejected an interpretation that would allow "appeals from guilty or nolo contendere pleas as long as a defendant is challenging his or her conviction or sentence based on jurisdiction, the legality of the proceedings, or any of the claims that are permitted under K.S.A. 60-1507." 311 Kan. at 113-14 (noting this construction would "swallow up the prohibition" in the statute). We are duty-bound to follow our Supreme Court's precedent absent some indication that our Supreme Court is moving away from its previous precedent. *State v. Loganbill*, 62 Kan. App. 2d 552, 582, 518 P.3d 437 (2022).

That brings us to the argument made in Harding's brief. Harding specifically does not make an argument about the jury trial waiver to challenge the denial of his presentence motion to withdraw his plea. Rather, he argues that the district court's alleged failure to properly advise him of his right to a jury trial or secure a waiver of that right on the record *independently* requires reversal of his conviction—although in contradiction he asks this court to set aside his conviction and remand so he can be fully "advised" or "inform[ed]" of his right to a jury trial. But allowing a defendant to challenge a conviction following a no contest plea through a jury trial waiver claim like Harding tries to do here would seem to be exactly the type of "commonplace" challenge based on "the legality of the proceedings" that the *Smith* court wanted to avoid. 311 Kan. at 114.

Affirmed.