

NOT DESIGNATED FOR PUBLICATION

No. 125,718

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

KIRTIS RAY EASLEY,
Appellant.

MEMORANDUM OPINION

Appeal from Butler District Court; CHAD M. CRUM, judge. Opinion filed August 4, 2023.

Affirmed.

Submitted by the parties for summary disposition under K.S.A. 2022 Supp. 21-6820(g) and (h).

Before ARNOLD-BURGER, C.J., MALONE and SCHROEDER, JJ.

PER CURIAM: Kirtis Ray Easley appeals the district court's refusal to grant his request for a downward dispositional departure and award him probation. We granted Easley's motion for summary disposition in lieu of briefs under Supreme Court Rule 7.041A (2023 Kan. S. Ct. R. at 48). The State did not respond. Following a review of the record, we affirm.

FACTUAL AND PROCEDURAL HISTORY

Easley pleaded no contest to violating the Kansas Offender Registration Act (KORA), K.S.A. 22-4901 et seq., after he failed to register his updated license plate on July 1, 2021. Pursuant to a plea agreement, the State dismissed two other felony charges

for violating KORA. Under the revised Kansas Sentencing Guidelines Act (KSGA), K.S.A. 2021 Supp. 21-6801 et seq., Easley was subject to a presumptive prison sentence of 34 to 38 months based on his combined criminal history score and the severity level of his crime. Easley also faced a presumptive prison sentence by special rule because he violated KORA and committed a crime while on felony supervision. See K.S.A. 2021 Supp. 21-6804(m); K.S.A. 2021 Supp. 21-6604(f)(1). Before sentencing, Easley requested dispositional or durational departure from the presumptive prison sentence. In June 2022, Easley began serving a 30-month sentence in a separate matter.

At the sentencing hearing, Easley supported his departure request by first arguing that his prior convictions were old and unrelated to the instant offense. The two convictions counting toward his criminal history score included a person felony in 1998 and a nonperson felony in 2006. Easley then argued that his instant offense was a "paper felony" causing no harm or loss, so the legislative goal of reserving prison space for harmful offenders was not met by imposing a presumptive prison sentence in a case like this. Easley argued for a dispositional departure or, in the alternative, a durational departure to 17 months. Requesting probation, Easley made a statement to the district court, apologizing and accepting responsibility for his violations.

Countering that Easley's offenses were subject to special rules mandating presumptive prison sentences, the State urged the district court to uphold the plea agreement. Per the agreement, the State stood silent on a durational departure to a 17-month prison sentence to run consecutive to Easley's 30-month sentence in the other matter.

The district court denied Easley's dispositional departure request, noting Easley's history as "not a very good probationer." The district court did, however, find "substantial and compelling reasons" to grant a downward durational departure, sentencing Easley to

17 months in prison instead of the presumptive 34-month term under the KSGA. Easley timely appeals.

ANALYSIS

On appeal, Easley argues that the district court abused its discretion by denying his request for a dispositional departure. Because the district court granted him a durational departure sentence, this court has jurisdiction to review his claim that the district court erred in denying his request for a dispositional departure. See *State v. Ibarra*, 307 Kan. 431, 433, 411 P.3d 318 (2018) (noting its holding in *State v. Looney*, 299 Kan. 903, 909, 327 P.3d 425 [2014], *overruling State v. Crawford*, 21 Kan. App. 2d 169, 897 P.2d 1041 [1995]). We observe no abuse of discretion.

A district court may depart from the presumptive sentence required by the KSGA when the court finds "substantial and compelling reasons" to justify the departure. K.S.A. 2022 Supp. 21-6815(a). Substantial reasons are "real, not imagined, and of substance, not ephemeral." *State v. Reed*, 302 Kan. 227, 250, 352 P.3d 530 (2015). Compelling reasons force the court, by facts of the case, to leave the status quo and go beyond the ordinary sentence. 302 Kan. at 250.

"A district court's decision to deny a departure will not be reversed unless this court determines that 'the district court's findings of fact are unsupported by substantial competent evidence or that its consideration of mitigators and/or aggravators constituted an abuse of discretion.' . . . "A district court abuses its discretion if its decision is (1) arbitrary, fanciful, or unreasonable; (2) based on an error of law; or (3) based on an error of fact." [Citations omitted.]" *Ibarra*, 307 Kan. at 433.

Easley argues that the district court made an error of law by precluding dispositional departure based on Easley's prior convictions, contrary to K.S.A. 2021 Supp. 21-6815. The district court made no such error. The court was merely noting, in

response to Easley's argument that this was a victimless paper offense, that the Legislature had decided that regardless of it being a paper offense the punishment would be presumptive prison. And it was Easley's history of failed probation and failure to comply with registration requirements that gave the court reason to believe Easley could not successfully comply with the terms of probation as requested. Easley does not assert that the district court's decision was based on an error of fact, nor does he persuade us that no reasonable person would have agreed with the district court's decision to deny his request for dispositional departure to probation.

Contrary to Easley's arguments on appeal, our review of the record shows that the district court thoughtfully analyzed Easley's departure request. The district court found that the reasons provided in the request for departure warranted a durational departure to a 17-month (rather than 34-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. As an appellate court, our review is limited to determining whether the district court's findings of fact and reasons justifying the denial of departure are supported by evidence. *State v. Montgomery*, 314 Kan. 33, 36, 494 P.3d 147 (2021). A review of the record reveals that the district court's decision was based on substantial competent evidence, and Easley does not argue otherwise.

Affirmed.