

NOT DESIGNATED FOR PUBLICATION

No. 126,338

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

MARC A. WILLIAMS,
Appellant,

v.

STATE OF KANSAS,
Appellee.

MEMORANDUM OPINION

Appeal from Wyandotte District Court; AARON T. ROBERTS, judge. Submitted without oral argument. Opinion filed December 8, 2023. Affirmed.

Joseph A. Desch, of Law Office of Joseph A. Desch, of Topeka, for appellant.

Ivan Moya, assistant district attorney, *Mark A. Dupree Sr.*, district attorney, and *Kris W. Kobach*, for appellee.

Before BRUNS, P.J., COBLE and PICKERING, JJ.

PER CURIAM: Marc A. Williams appeals the district court's order summarily denying his K.S.A. 60-1507 motion as successive. On appeal, Williams contends that his allegation of actual innocence circumvents the procedural bar of successiveness. As a result, he argues that the district court erred by failing to hold an evidentiary hearing on his motion. Based on our review of the record on appeal, we conclude that Williams' K.S.A. 60-1507 motion is successive and that his allegation of actual innocence is conclusory. Thus, we affirm.

FACTS AND PROCEDURAL BACKGROUND

The underlying facts are undisputed and are not material to the issue presented on appeal. In 2015, Williams was convicted of two counts of aggravated indecent liberties with a child and one count of aggravated criminal sodomy of a child. He was sentenced to life in prison without the possibility of parole for 25 years. Although Williams maintained that he was innocent, his convictions were affirmed by a panel of this court. *State v. Williams*, No. 114,962, 2017 WL 2832629, at *1 (Kan. App.) (unpublished opinion) *rev. denied* 307 Kan. 933 (2017).

In 2018, Williams filed a pro se K.S.A. 60-1507 motion, bringing three claims: ineffective assistance of counsel, insufficient evidence to support his three convictions, and prosecutorial error in closing arguments. The district court appointed counsel to represent Williams but ultimately denied the K.S.A. 60-1507 motion after a preliminary hearing. In denying the motion, the district court also rejected Williams' implicit argument that he was innocent of the charges because "somebody else [had done] something" to the victim. *Williams v. State*, No. 121,327, 2020 WL 4249692, at *4 (Kan. App. 2020) (unpublished opinion). In affirming the district court, a panel of this court found that a "vague reference to hearing about someone else doing something" to the victim was not sufficient to justify an evidentiary hearing. 2020 WL 4249692, at *5.

On December 15, 2022, Williams filed another pro se K.S.A. 60-1507 motion that is the subject of this appeal. In his second motion, he asserted claims of ineffective assistance of counsel, insufficient evidence, and prosecutorial error. These claims were identical to those set forth in his previous K.S.A. 60-1507 motion. In addition, he asserted an allegation of actual innocence. However, the motion did not set forth a factual basis for this allegation. Consequently, the district court summarily denied Williams' second K.S.A. 60-1507 motion on the ground that it was successive and did not adequately allege exceptional circumstances to justify the filing of a motion that sought to "relitigate

essentially the same issues the district court and court of appeals denied in his 2018 motion."

Thereafter, Williams filed a timely notice of appeal.

ANALYSIS

Williams contends that the district court erred by summarily denying his second K.S.A. 60-1507 motion as successive. When considering a K.S.A. 60-1507 motion, a district court has three options:

"(1) The court may determine that the motion, files, and case records conclusively show the prisoner is entitled to no relief and deny the motion summarily; (2) the court may determine from the motion, files, and records that a potentially substantial issue exists, in which case a preliminary hearing may be held. If the court then determines there is no substantial issue, the court may deny the motion; or (3) the court may determine from the motion, files, records, or preliminary hearing that a substantial issue is presented requiring a full hearing.' [Citation omitted.]" *Sola-Morales v. State*, 300 Kan. 875, 881, 335 P.3d 1162 (2014).

Here, the district court chose the first option and summarily denied Williams' most recent K.S.A. 60-1507 motion. Accordingly, we conduct a de novo review to determine whether the motion, files, and records in this case conclusively establish that Williams is not entitled to relief. See *Sola-Morales*, 300 Kan. at 881.

Generally, a district court is not required to entertain a second or successive motion for similar relief on behalf of the same inmate. *State v. Mitchell*, 315 Kan. 156, 160, 505 P.3d 739 (2022); see Supreme Court Rule 183(d) (2023 Kan. S. Ct. R. at 243). An exception to this general rule exists where a movant shows "exceptional circumstances to justify the filing of a successive motion." *Mitchell*, 315 Kan. at 160. Exceptional circumstances are unusual events or intervening changes in the law that

prevented the movant from reasonably being able to raise the issue in the first postconviction motion. 315 Kan. at 160.

The Kansas Supreme Court has found that such circumstances include a showing of a colorable claim of actual innocence based on new evidence. *Beauclair v. State*, 308 Kan. 284, 304, 419 P.3d 1180 (2018); see K.S.A. 2022 Supp. 60-1507(f)(2)(A). In determining whether exceptional circumstances exist, courts must "factor[] in whether justice would be served by doing so." *Littlejohn v. State*, 310 Kan. 439, 446, 447 P.3d 375 (2019). To make a colorable claim of actual innocence, a movant must show that it is more likely than not that no reasonable juror would have convicted him in light of new evidence. *Beauclair*, 308 Kan. at 301.

Allegations of actual innocence must be more than simply conclusory assertions. 308 Kan. at 302. In other words, a movant must support the claim with "reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence [among others]—that was not presented at trial." 308 Kan. at 299. And "[w]hile pro se pleadings are to be liberally construed . . ., this simply means that the substance of the pleading controls over its label," not that pro se litigants gain any substantive advantage. *Joritz v. University of Kansas*, 61 Kan. App. 2d 482, 498, 505 P.3d 775, *rev. denied* 315 Kan. 968 (2022).

Here, Williams candidly concedes his second motion is successive. Instead, he argues that his allegation of innocence circumvents the statutory prohibition against the filing of his successive K.S.A. 60-1507 motion. But as the State points out in its brief, Williams' claim of actual innocence is "merely a recitation of case law couched in legalese, lacking any new supporting evidence that would distinguish his motion from the one filed in 2018."

Based on our review of the record on appeal, we agree with the district court that Williams' conclusory allegation of actual innocence is insufficient to mandate an evidentiary hearing on his successive K.S.A. 60-1507 motion. Moreover, we find that Williams has failed to come forward with any new evidence sufficient to show that it is more likely than not that no reasonable juror would have convicted him had it been presented at trial. Rather, his second K.S.A. 60-1507 motion basically rehashes the information already presented at his trial, on direct appeal, and in his first K.S.A. 60-1507 motion.

For example, Williams alleges in his second K.S.A. 60-1507 motion that his trial counsel made "a number of unforced errors," points to what he perceives as the "overall weakness of the [S]tate's case," and claims the prosecutor erred at trial during her closing arguments. Of course, all these things happened at trial and any issues relating to these allegations were either already presented in Williams' direct appeal and in his first K.S.A. 60-1507 motion or could have been. Accordingly, Williams fails to establish a colorable claim of actual innocence sufficient to warrant an evidentiary hearing on his second K.S.A. 60-1507 motion.

In conclusion, because Williams has failed to establish a colorable claim of actual innocence or other exceptional circumstances, we find that his second K.S.A. 60-1507 motion is barred on the grounds that it is successive. See K.S.A. 2022 Supp. 60-1507(c). As a result, we conclude that the district court did not err by summarily denying his substantive claims without an evidentiary hearing. We, therefore, affirm the district court's order.

Affirmed.