

NOT DESIGNATED FOR PUBLICATION

No. 126,551

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

ENRIQUE PERALES,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; SETH L. RUNDLE, judge. Submitted without oral argument. Opinion filed June 7, 2024. Affirmed.

Sam S. Kepfield, of Hutchinson, for appellant.

Julie A. Koon, assistant district attorney, *Marc Bennett*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before PICKERING, P.J., MALONE and WARNER, JJ.

PER CURIAM: Enrique Perales appeals the district court's summary denial of his petition for DNA testing under K.S.A. 21-2512. After reviewing the record and the parties' arguments, we affirm the district court's decision.

Perales was convicted of aggravated battery and aggravated criminal sodomy. Since his trial, Perales has requested DNA testing (or the disclosure of DNA test results) three times. His third request is before us now.

Perales filed his first motion about DNA testing after his trial but before sentencing. Perales had represented himself at trial and filed several pro se motions, including a motion to compel the State to produce DNA results from cheek swabs collected from Perales and the victim during the forensic investigation. The court appointed counsel to represent Perales, but that attorney declined to adopt Perales' pro se motion to compel the State to produce DNA results because there had been no DNA testing done. The district court denied the motion "as not adopted by the attorney."

Perales' convictions and sentence were affirmed on appeal. *State v. Perales*, No. 119,815, 2019 WL 5089857, at *13 (Kan. App. 2019) (unpublished opinion), *rev. denied* 312 Kan. 899 (2020). While his direct appeal was pending, Perales filed a second request related to DNA testing in the district court. In this motion, Perales requested testing of the cheek swabs collected from Perales and the victim and also requested testing of the victim's shirt for traces of blood. Perales acknowledged that the State would likely contest this petition since he had "admitted to oral copulation," but he maintained that the State had a continuing duty to disclose evidence favorable to the defense.

The district court denied Perales' request, and this court affirmed the district court's denial, albeit for different reasons. *State v. Perales*, No. 122,778, 2021 WL 2283698, at *4 (Kan. App. 2021) (unpublished opinion). Relevant here, we found that Perales was not entitled to DNA testing of the requested items under K.S.A. 2020 Supp. 21-2512. 2021 WL 2283698, at *4. In particular, we noted that Perales' request to test the victim's shirt for traces of blood was not authorized under K.S.A. 2020 Supp. 21-2512(a) because it was an attack on his conviction for aggravated battery, which is not a crime where postconviction DNA testing is statutorily permitted. 2021 WL 2283698, at *4. And we found no error in denying Perales' request to test the cheek swabs. Those results would be merely cumulative of other evidence presented and would have had no impact on the outcome of the trial because Perales admitted at trial that the victim fellated him. 2021 WL 2283698, at *3.

Perales did not file a petition for review of this court's decision. Instead, about a year and a half later, Perales filed a third request for DNA testing of his and the victim's cheek swabs—the subject of this appeal. The district court summarily denied Perales' request, as it merely repeated his previous but unsuccessful request for testing.

On appeal, Perales argues the district court erred in summarily denying his petition under K.S.A. 21-2512, a question over which we exercise unlimited review. *State v. Angelo*, 316 Kan. 438, 446, 518 P.3d 27 (2022); see also *State v. Salary*, 309 Kan. 479, 481, 437 P.3d 953 (2019) (appellate courts have plenary review over issue and claim preclusion).

In general, Kansas courts do not allow litigants to argue the same question repeatedly. Instead, a person requesting relief has "one opportunity for argument and decision of the matter at issue." *State v. Bailey*, 315 Kan. 794, 800, 510 P.3d 1160 (2022). There is no question that Perales' latest request for DNA testing seeks the same relief that this court previously considered on the merits and denied. See *Perales*, 2021 WL 2283698, at *3-4. We agree with the district court that Perales cannot relitigate that question here. See *Bailey*, 315 Kan. at 802-03 (concluding a litigant's second request for DNA testing was precluded by a previous court ruling denying that relief). We thus affirm the district court's dismissal of Perales' most recent request for DNA testing.

Affirmed.