

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 125,552

In the Matter of the Wrongful Conviction of  
DAMEON BAUMGARNER.

SYLLABUS BY THE COURT

When a claimant is wrongfully convicted of a felony crime and sentenced to jail time under K.S.A. 2022 Supp. 21-6603(g)—which permits a sentencing court to impose up to 60 days "imprisonment" in county jail as a condition of probation in felony cases—the claimant is "imprisoned" for the purposes of K.S.A. 2022 Supp. 60-5004(c)(1)(A).

Appeal from Sumner District Court; GATEN T. WOOD, judge. Oral argument held May 15, 2023. Opinion filed October 20, 2023. Reversed and remanded with directions.

*Larry G. Michel*, of Kennedy Berkley, of Salina, argued the cause and was on the brief for appellant.

*Kurtis K. Wiard*, assistant solicitor general, argued the cause, and *Kris W. Kobach*, attorney general, was with him on the brief for appellee.

The opinion of the court was delivered by

STEGALL, J.: Dameon Baumgarner was convicted of unlawfully possessing a firearm and sentenced to a 10-month prison term, which was suspended in lieu of a 60-day sentence in county jail and 18 months of probation. After he was released from jail, the Court of Appeals reversed his conviction and vacated his sentence. Baumgarner then sought compensation, alleging a wrongful conviction under K.S.A. 2022 Supp. 60-5004. To be eligible for such a civil recovery, Baumgarner first must establish that he was "convicted of a felony crime and subsequently imprisoned." K.S.A. 2022 Supp. 60-5004(c)(1)(A).

The district court dismissed Baumgarner's claim, reasoning that Baumgarner had not been "imprisoned" since he was not confined in a facility operated by the Kansas Department of Corrections (KDOC). Today we reverse the decision of the district court and conclude that Baumgarner was "imprisoned" for the purposes of the wrongful conviction compensation statute because his sentence was controlled by K.S.A. 2022 Supp. 21-6603(g), which contemplates 60 days "imprisonment" in a county jail as a condition of probation in felony cases.

#### FACTS

A jury convicted Baumgarner of one count of unlawful possession of a firearm under K.S.A. 2019 Supp. 21-6301(a)(13), which prohibits the possession of a firearm "by a person who is or has been a mentally ill person subject to involuntary commitment for care and treatment." As supporting evidence, the State introduced a 2015 district court order adjudicating Baumgarner to be a mentally ill person.

The sentencing court imposed a 10-month prison term, which was suspended in lieu of a 60-day sentence in county jail and 18 months of probation. Baumgarner also received 12 months of postrelease supervision. The conviction was also a violation of his probation in a prior case, which resulted in Baumgarner serving an additional, consecutive six-month jail term. In total, Baumgarner spent approximately eight months in the Sumner County Jail.

On appeal, the Court of Appeals reversed his conviction and vacated his sentence after finding the 2015 court order insufficient to prove Baumgarner is or has been a mentally ill person subject to involuntary commitment. *State v. Baumgarner*, 59 Kan. App. 2d 330, 340-42, 481 P.3d 170 (2021). Baumgarner then initiated the current civil

action under K.S.A. 2022 Supp. 60-5004(a)-(c)(1), which provides that a "person convicted and subsequently imprisoned" for a crime they did not commit "may bring an action in the district court seeking damages from the state" if the claimant can establish, by a preponderance of the evidence:

"(A) The claimant was convicted of a felony crime and subsequently imprisoned;

"(B) the claimant's judgment of conviction was reversed or vacated and either the charges were dismissed or on retrial the claimant was found to be not guilty;

"(C) the claimant did not commit the crime or crimes for which the claimant was convicted and was not an accessory or accomplice to the acts that were the basis of the conviction and resulted in a reversal or vacation of the judgment of conviction, dismissal of the charges or finding of not guilty on retrial; and

"(D) the claimant did not commit or suborn perjury, fabricate evidence, or by the claimant's own conduct cause or bring about the conviction. Neither a confession nor admission later found to be false or a guilty plea shall constitute committing or suborning perjury, fabricating evidence or causing or bringing about the conviction under this subsection."

The State moved to dismiss, arguing that because Baumgarner was confined in a county jail rather than a facility run by the KDOC, he was never "imprisoned." The district court agreed, determining that the use of the term "imprisoned" in K.S.A. 2022 Supp. 60-5004 referred only to imprisonment in a state correctional institution. As such, the court granted the State's motion to dismiss because Baumgarner was never physically placed in the custody of the KDOC.

Baumgarner timely filed a direct appeal of the district court's decision to this court. See K.S.A. 2022 Supp. 60-5004(l) ("The decision of the district court may be appealed directly to the supreme court pursuant to the code of civil procedure.").

## DISCUSSION

We exercise unlimited review in determining whether a district court erred by granting a motion to dismiss for failure to state a claim. We likewise exercise unlimited review in evaluating the district court's interpretation of K.S.A. 2022 Supp. 60-5004, as it requires interpretation of a statute. *In re M.M.*, 312 Kan. 872, 873-74, 482 P.3d 583 (2021).

The parties advance two distinct interpretations of the word "imprisoned" as it is used in K.S.A. 2022 Supp. 60-5004(c)(1)(A). The State argues a technical definition of "imprisoned" requiring confinement in a facility operated by the KDOC, while Baumgarner relies on a broader ordinary meaning definition of the word that could include any kind of confinement. But we do not need to engage the parties' arguments because the plain language of the statute governing Baumgarner's sentence explicitly tells us that Baumgarner was indeed "imprisoned" as a matter of law.

K.S.A. 2022 Supp. 21-6603(g) permits a defendant to receive up to 60 days "imprisonment" in a county jail as a condition of probation in felony cases. That statute defines "probation" as "a procedure under which a defendant, convicted of a crime, is released by the court after imposition of sentence, *without imprisonment except as provided in felony cases . . . .* In felony cases, *the court may include confinement in a county jail not to exceed 60 days.*" (Emphases added.) K.S.A. 2022 Supp. 21-6603(g).

This statutory language plainly shows that time served in a county jail as a condition of probation in felony cases constitutes "imprisonment." This is exactly what happened to Baumgarner, and we therefore conclude Baumgarner was "imprisoned" as a matter of law during his 60 days in the Sumner County Jail. Given this, he meets the threshold requirement in K.S.A. 2022 Supp. 60-5004(c)(1)(A) that the claimant must have been "convicted of a felony crime and subsequently imprisoned."

The parties also argue over Baumgarner's status—imprisoned or not imprisoned—during the additional six months he served in the county jail as a result of the revocation of his probation in a prior case. The lower court relied on the same rationale described above to rule Baumgarner was not imprisoned for those six months either. Here again, we need not consider the precise legal ruling made by the district court—i.e., that Baumgarner was not "imprisoned" during the six-month probation revocation term because he was only confined in jail. Whereas above, we reversed the district court on slightly different grounds, in this instance, we find the district court's conclusion was correct, but for the wrong reason. Because even if the felony conviction was a "but-for" cause of the probation revocation, the time served (whether imprisoned or not) cannot be said to have been time served on the underlying wrongful conviction. Given this, the maximum amount of time for which Baumgarner could potentially recover under the wrongful conviction compensation statute is for the 60 days he was imprisoned in the county jail as a condition of the felony probation.

Reversed and remanded for further proceedings consistent with this opinion.