IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 125,600

In the Matter of the Wrongful Conviction of
ERIC L. BELL.

SYLLABUS BY THE COURT

K.S.A. 2022 Supp. 60-5004(d)(2)'s use of the phrase "convicted, imprisoned and released from custody" refers to the imprisonment for which a claimant is seeking compensation, rather than some other, unrelated imprisonment.

Appeal from Sedgwick District Court; DEBORAH HERNANDEZ MITCHELL, judge. Opinion filed May 19, 2023. Affirmed.

Larry G. Michel, of Kennedy Berkley, of Salina, was on the brief for appellant.

Kurtis K. Wiard, assistant solicitor general, and *Derek Schmidt*, attorney general, were on the brief for appellee.

The opinion of the court was delivered by

WILSON, J.: Eric L. Bell directly appeals from the Sedgwick County District Court's dismissal of his K.S.A. 2021 Supp. 60-5004 wrongful conviction action for failure to state a claim on which relief can be granted under K.S.A. 2021 Supp. 60-212(b)(6). Bell argues that the district court erroneously concluded the statute of limitations barred his action. He claims entitlement to the application of both the statutory

tolling provision in K.S.A. 60-515(a) and the doctrine of equitable tolling. We disagree and affirm the district court.

FACTS AND PROCEDURAL BACKGROUND

Bell's wrongful conviction claim arises from his 2004 convictions and imprisonment, described in his three previous appeals. *State v. Bell*, No. 93,153, 2005 WL 3030333 (Kan. App. 2005) (unpublished opinion) (*Bell I*); *Bell v. State*, No. 99,484, 2009 WL 454946 (Kan. App. 2009) (unpublished opinion) (*Bell II*); *Bell v. State*, 46 Kan. App. 2d 488, 263 P.3d 840 (2011) (*Bell III*). A summary sets the stage for the claims before us.

A jury found Bell guilty of one count each of rape and criminal restraint and four counts of domestic battery. *Bell I*, 2005 WL 3030333, at *1. For these convictions, he was sentenced to 253 months in prison. Bell consistently maintained his innocence to these crimes.

A panel of the Kansas Court of Appeals affirmed Bell's convictions in *Bell I*. But Bell's subsequent K.S.A. 60-1507 action, which spanned both *Bell II* and *Bell III*, proved more successful. In 2011, a panel of the Kansas Court of Appeals reversed Bell's convictions based on juror misconduct. *Bell III*, 46 Kan. App. 2d at 489, 497. After the State declined to retry Bell, the district court dismissed his charges and ordered him released. According to Bell, his then-attorney told him he had no right to any compensation for this imprisonment.

Subsequent Developments

Bell was later convicted of unrelated charges. He was imprisoned in June 2018 and apparently remained incarcerated at all relevant times afterward.

On July 1, 2018, K.S.A. 2018 Supp. 60-5004 went into effect, creating a cause of action that allows "a person convicted and subsequently imprisoned for one or more crimes that such person did not commit" to seek damages from the state. K.S.A. 2018 Supp. 60-5004(a)-(b). K.S.A. 2018 Supp. 60-5004(d)(1) set forth a two-year statute of limitations, while K.S.A. 2018 Supp. 60-5004(d)(2) provided that "[a] claimant convicted, imprisoned and released from custody before July 1, 2018, must commence an action under this section no later than July 1, 2020."

Then came the COVID-19 global pandemic. Pertinent to Bell's potential cause of action for wrongful conviction, Kansas Supreme Court Administrative Order No. 2020-PR-016, effective March 18, 2020, suspended "all statutes of limitations and statutory time standards or deadlines applying to the conduct or processing of judicial proceedings" until further order. Paragraph (4) of Order 2020-PR-016. Later orders extended that suspension. Kansas Supreme Court Administrative Order No. 2020-PR-58, effective May 27, 2020; Kansas Supreme Court Administrative Order No. 2020-PR-101, effective September 15, 2020.

But on April 15, 2021, Administrative Order No. 2021-PR-020, effective March 30, 2021, lifted the suspension of most statutes of limitations—including K.S.A. 2020 Supp. 60-5004's statute of limitations. When the suspension was lifted, application of the statutory deadline gave Bell until July 28, 2021, to file his case.

In October 2021, Bell asserts another inmate told him about a possible cause of action under K.S.A. 2021 Supp. 60-5004. Bell soon drafted a petition and a motion to file suit out of time, which he dated November 18, 2021, and which was filed with the clerk of the district court later that same month.

District Court Proceedings

The State moved to dismiss Bell's case, arguing among other things that Bell had failed to timely sue. Bell responded pro se to the State's motion; his counsel also responded. Bell's counsel argued that the statute of limitations was tolled under K.S.A. 60-515 and that the statute of limitations should be equitably tolled. Additionally, Bell's counsel argued that the extent of Bell's access to the courts under K.S.A. 60-515 constituted a question of fact, thus rendering the case inappropriate for dismissal under K.S.A. 2021 Supp. 60-212(b)(6). Bell himself argued that "the honest reason why [he] did not file a claim under K.S.A. 60-5004 [was] that [he] simply had absolutely no knowledge or information regarding its existence until October of 2021 & wasted absolutely NO time drafting & submitting [his] Motion To File A Claim Out of Time."

In a brief order, the district court granted the State's motion to dismiss because "the case was filed outside the statute of limitations." Bell then appealed.

ANALYSIS

Bell argues the district court incorrectly dismissed his suit for failure to state a claim because factual questions remain over the application of K.S.A. 60-515(a) and the doctrine of equitable tolling. Bell also claims that the "literal interpretation" of K.S.A. 2022 Supp. 60-5004(d)(2) establishes that the court erred in dismissing his claim. Bell raised all three arguments below, thus preserving them for review.

Standard of Review

When a district court dismisses an action under K.S.A. 2022 Supp. 60-212(b)(6) for failure to state a claim, an appellate court must "'determine whether, in the light most favorable to the plaintiff, and with every doubt resolved in the plaintiff's favor, the petition states any valid claim for relief.'" *McCormick v. City of Lawrence*, 278 Kan. 797, 798, 104 P.3d 991 (2005). When such a dismissal is based on the interpretation of a statute, the court's review is de novo. 278 Kan. at 798.

Discussion

K.S.A. 2022 Supp. 60-5004(d)(1)-(2) establish the statute of limitations applicable to civil claims for wrongful conviction and imprisonment:

> "(d)(1) The suit, accompanied by a statement of the facts concerning the claim for damages, verified in the manner provided for the verification of complaints in the rules of civil procedure, shall be brought by the claimant within a period of two years after the: (A) Dismissal of the criminal charges against the claimant or finding of not guilty on retrial; or (B) grant of a pardon to the claimant.
>
> "(2) A claimant convicted, imprisoned and released from custody before July 1, 2018, must commence an action under this section no later than July 1, 2020."

We begin with Bell's argument over the interpretation of K.S.A. 2022 Supp. 60-5004(d)(2). While Bell admits that the language "convicted, imprisoned and released" "is probably based on the assumption that the incarceration in question is for the crime for which the defendant was wrongfully convicted," he points out that nothing in the statute confirms that assumption. Instead, Bell argues that, because he was in prison on July 1,

2018, on charges unrelated to his wrongful imprisonment claim, K.S.A. 2022 Supp. 60-5004(d)(2) "requires denial of the State's motion" to dismiss.

We disagree. To interpret K.S.A. 2022 Supp. 60-5004(d)(2) as Bell suggests would doom his claim, not save it. K.S.A. 2022 Supp. 60-5004 did not *exist* when Bell was released from prison for the underlying crime back in 2012; the cause of action, when the Legislature created it, only grandfathered individuals like him—that is, people *previously* "convicted, imprisoned and released from custody"—under K.S.A. 2022 Supp. 60-5004(d)(2). If K.S.A. 60-5004(d)(2) did not apply to Bell because he was imprisoned on July 1, 2018, on charges unrelated to his wrongful imprisonment claim, Bell's two-year deadline to file would have passed in 2014—four years before the statute was enacted. As this construction is absurd, it cannot reflect the Legislature's intent. E.g., *State v. Scheuerman*, 314 Kan. 583, 590, 502 P.3d 502, *cert. denied* 143 S. Ct. 403 (2022). Instead, we construe K.S.A. 2022 Supp. 60-5004(d)(2)'s use of the phrase "convicted, imprisoned and released from custody" to refer to the wrongful imprisonment for which a claimant is seeking compensation, rather than some other, unrelated imprisonment. Because Bell had been convicted, imprisoned, and released from custody on the charges for which he now seeks compensation, his deadline to file was July 1, 2020, unless tolled by another provision of law.

We turn next to Bell's claims that the district court erred by not applying the tolling provision in K.S.A. 60-515(a) or the doctrine of equitable tolling to extend his time to file. Neither theory affords Bell relief.

K.S.A. 60-515(a) provides, in relevant part:

> "[I]f any person entitled to bring an action . . . at the time the cause of action accrued or at any time during the period the statute of limitations is running, is . . . imprisoned for a

> term less than such person's natural life, such person shall be entitled to bring such action within one year after the person's disability is removed, except that no such action shall be commenced by or on behalf of any person under the disability more than eight years after the time of the act giving rise to the cause of action.
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> "Notwithstanding the foregoing provision, if a person imprisoned for any term has access to the court for purposes of bringing an action, such person shall not be deemed to be under legal disability."

Bell argues that the COVID-19 pandemic altered normal court function and limited Bell's ability "to access resources and interact with other prisoners, which was how he became aware of the change in the law." But Bell fails to show how those things affected his access to the *court* for the purpose of bringing an action.

While the effect of an alteration to normal court functioning might pose a question of fact on its own, Bell's own arguments undercut any such question. As Bell's pro se response to the motion to dismiss argues, "the honest reason why [he] did not file a claim under K.S.A. 60-5004 [was] that [he] simply had absolutely no knowledge or information regarding its existence until October of 2021 & wasted absolutely NO time drafting & submitting [his] Motion To File A Claim Out of Time." This assertion, combined with the fact that Bell filed suit while he was apparently incarcerated, undermines any claim that he lacked "access to the court for purposes of bringing an action." Cf. *Hood v. Prisoner Health Services., Inc.*, 180 Fed. Appx. 21, 25 (10th Cir. 2006) (unpublished opinion) (noting that the plaintiff did not present "any facts tending to show that he lacked access to the courts [in fact, when this suit was ultimately filed, he remained in KDOC custody]").

Further, Bell's conclusory claim that the COVID-19 protocols affected his "access" of any kind ignores that he was in prison for roughly 21 months *before* the

advent of the COVID-19 pandemic. In other words, Bell had about 21 months to sue before any COVID-19-related protocols went into effect.

When the suspension of the statute of limitations was lifted, Bell still had about three months under the black letter of the statute to file. That time clearly expired without a filing. Thus, we perceive no unresolved question of fact as to K.S.A. 60-515(a)'s tolling provision.

We finally turn to the doctrine of equitable tolling. Under certain circumstances, "[e]quitable estoppel can be applied to bar a party from relying on the defense of the statute of limitations." *Rockers v. Kansas Turnpike Authority*, 268 Kan. 110, 116, 991 P.2d 889 (1999). The burden is on the party claiming application of the doctrine.

> "'A party asserting equitable estoppel must show that another party, by its acts, representations, admissions, or silence when it had a duty to speak, induced it to believe certain facts existed. It must also show it rightfully relied and acted upon such belief and would now be prejudiced if the other party were permitted to deny the existence of such facts.'" *Rockers v. Kansas Turnpike Authority*, 268 Kan. at 116 (quoting *United American State Bank & Trust Co. v. Wild West Chrysler Plymouth, Inc.*, 221 Kan. 523, 527, 561 P.2d 792 [1977]).

Each element of equitable estoppel must be proved or the claim fails. *Rockers*, 268 Kan. at 116.

Interpreting federal law, the United States Supreme Court has recognized "that a nonjurisdictional federal statute of limitations is normally subject to a 'rebuttable presumption' in favor 'of equitable tolling.'" *Holland v. Florida.*, 560 U.S. 631, 645-46, 130 S. Ct. 2549, 177 L. Ed. 2d 130 (2010). Under this framework, if a statute of limitations is subject to equitable tolling, "a 'petitioner' is 'entitled to equitable tolling'

only if *he* shows '(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way' and prevented timely filing." (Emphasis added.). 560 U.S. at 649.

Assuming without deciding that the statute of limitations in K.S.A. 2022 Supp. 60-5004 is subject to equitable tolling, we again find no lingering question of fact needing resolution. As both *Rockers* and *Holland* clarify, Bell bears the burden of presenting and proving his claim. Under *Rockers*, that requires proof of State inducement by action or silence, reliance upon such action or silence, and prejudice. Under the *Holland* framework, Bell would need to prove diligent pursuit of his rights and an extraordinary circumstance that prevented him from timely filing his claim. As we have already noted, Bell's pro se filings before the district court clarify that ignorance of the law alone delayed his lawsuit. And "mere ignorance of the law is not a basis for equitable tolling of a statute of limitations, even for pro se prisoners." *State v. Fox*, 310 Kan. 939, 943, 453 P.3d 329 (2019).

Federal courts have explored more thoroughly the effect of COVID-19 on equitable tolling. See generally Downey, *Extraordinary Circumstances and Extraordinary Writs: Equitable Tolling During the Covid-19 Pandemic and Beyond*, 27 Berkeley J. Crim. L. 31 (2022). The Tenth Circuit recently concluded that a pro se prisoner was not entitled to equitable tolling in the COVID-19 era based on limited access to a law library when he failed to show that he had been "pursuing his rights diligently throughout the one-year window, including before the COVID-19 restrictions went into place." *Donald v. Pruitt*, 853 Fed. Appx. 230, 234 (10th Cir. 2021) (unpublished opinion) (citing several similar COVID-19-era cases in accord). Pre-COVID cases generally reached similar outcomes. E.g., *Jones v. Taylor*, 484 Fed. Appx. 241, 242 (10th Cir. 2012) (unpublished opinion) ("Ordinarily, however, neither ignorance of the law nor limited access to materials and legal assistance supports a claim of

equitable tolling."). And while "a complete denial of access to materials at a critical time may justify equitable tolling," this justification evaporates when a prisoner also could have acted at times when there was no such denial. *Jones*, 484 Fed. Appx. at 243.

As with his claim under K.S.A. 60-515(a), Bell's 21 months of imprisonment *before* the COVID-19 pandemic undermine his argument that COVID-19 protocols prevented him from filing his action. And Bell's own statements reveal that he filed late not because his access to the courts was impaired, but because he did not know about the new cause of action set forth in K.S.A. 2022 Supp. 60-5004. This ignorance of the law poses no question of fact for a court to address.

Thus, because Bell has not asserted the existence of any specific facts that would support the application of equitable tolling, he has failed to show that the district court erred by failing to apply the doctrine to his claim. Under the circumstances, the district court correctly dismissed Bell's case for failure to state a claim.

CONCLUSION

We affirm the district court's dismissal of Bell's case for failure to state a claim.

Affirmed.