IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 128,056

STATE OF KANSAS,
Appellee,

v.

CHARLES C. HUNTER,
Appellant.

SYLLABUS BY THE COURT

1.

Whether a sentence is illegal is a question of law over which appellate courts exercise unlimited review. A court may correct an illegal sentence at any time while the defendant is serving the sentence.

2.

An order of commitment under K.S.A. 22-3430 cannot simultaneously be imposed with an underlying Kansas Sentencing Guidelines Act prison sentence, because commitment is a process done in lieu of sentencing.

Review of the judgment of the Court of Appeals in an unpublished opinion filed September 12, 2025. Appeal from Pawnee District Court; BRUCE GATTERMAN, judge. Oral argument held May 20, 2026. Opinion filed September 11, 2026. Judgment of the Court of Appeals vacating the sentence is affirmed. Judgment of the district court is vacated, and the case is remanded with directions.

Joseph A. Desch, of Law Office of Joseph A. Desch, of Topeka, argued the cause and was on the brief for appellant.

Kris Ailslieger, deputy solicitor general, argued the cause, and *Steven J. Obermeier*, assistant solicitor general, and *Kris W. Kobach*, attorney general, were on the brief for appellee.

The opinion of the court was delivered by

STEGALL, J.: In 1979, Charles C. Hunter was sentenced to 29 to 110 years in prison for his convictions of four counts of rape, seven counts of aggravated burglary, and two counts of attempted rape. *Hunter v. State*, No. 70,835, 1994 WL 17120799, at *1 (Kan. App. 1994) (unpublished opinion). Over the course of this sentence, Hunter was in the custody of the Kansas Department of Corrections (KDOC) and incarcerated in various correctional facilities, including Larned State Security Hospital (LSSH) due to his mental health conditions.

In 2005, while at LSSH, Hunter attacked a correctional officer. Hunter had become upset after being told to pick up his shoes, so he refused to comply, swung his belt, struck the officer with the buckle, and then struck the officer in the face with a closed fist. In 2007, a jury convicted Hunter of battery of a correctional officer. *State v. Hunter*, 41 Kan. App. 2d 507, 513, 203 P.3d 23 (2009). The district court then sentenced Hunter to 130 months' imprisonment, to be served consecutively to Hunter's 29- to 110-year sentence. See K.S.A. 21-4608(e)(1) (Torrence 2007) (requiring that any person convicted and sentenced for a crime while incarcerated for a felony shall serve that sentence consecutively to the terms under which the person was incarcerated). The district court also ordered, at the recommendation of the parties, that Hunter would serve this sentence at LSSH pursuant to its commitment order under K.S.A. 22-3430.

In May 2021, Hunter was granted parole from his 29- to 110-year sentence. He then served another 16 months for another conviction from 2014. The details of that

conviction are not material to this appeal. Hunter was then released from the custody of the KDOC and transferred to the custody of the Superintendent of LSSH to serve his remaining 130-month sentence while being committed at LSSH.

In 2024, Hunter filed this motion to correct an illegal sentence. The district court denied his motion and Hunter appealed. For the first time on appeal, Hunter argued that his 130-month sentence was illegal because the district court lacked the authority to impose a Kansas Sentencing Guidelines Act (KSGA) sentence while *also* committing Hunter in lieu of imprisonment. See K.S.A. 22-3430.

A panel of the Court of Appeals agreed, finding that commitment and sentencing were mutually exclusive avenues available to the district court. The panel found that "[t]he problem with what happened in this case is that the court tried to do two things at one time and could not legally do so." *State v. Hunter*, No. 128,056, 2025 WL 2631391, at *4 (Kan. App. 2025) (unpublished opinion). The panel therefore vacated Hunter's sentence but found that the district court's order of commitment was still in effect.

The State petitioned this court for review.

FACTS AND PROCEDURAL BACKGROUND

In 2007, Hunter went to trial for his 2005 battery against a law enforcement officer. At trial, his defense was that he was not guilty because he suffered from a mental disease or defect, rendering him incapable of forming the requisite intent to commit the crime. *Hunter*, 41 Kan. App. 2d at 510. The jury rejected Hunter's defense and convicted him.

Prior to sentencing, Hunter asked for an evaluation under K.S.A. 22-3429, which provides the court with a report about possible psychiatric care and treatment in lieu of confinement or imprisonment. See K.S.A. 22-3430. The district court granted the motion, and the evaluator's report ultimately found that Hunter "exhibited an extensive history of mental health symptoms, including delusions of grandeur and persecution, ideas of reference, and paranoia" consistent "with a diagnosis of Schizophrenia, Paranoid Type." The report recommended that Hunter be committed to LSSH in lieu of confinement or imprisonment.

On September 21, 2007, the district court held Hunter's sentencing hearing. At the sentencing hearing, both parties requested that Hunter be sentenced to the standard sentence of 130 months, *but* that Hunter serve that sentence at LSSH. The State specifically said "we have no objection that that sentence could be served by way of treatment." The State further recognized that Hunter was already being held at LSSH, so such a sentence would not be a major change. Counsel for Hunter said "we would ask that the Court abide by that recommendation and in lieu of sentencing to a penal institution, you provide that that be served within the State Security Hospital."

The district court pronounced Hunter's sentence as follows:

> "I will *sentence* Mr. Hunter to the standard sentencing range of 130 months. . . .
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> . . . .
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> "With respect to the facility to which Mr. Hunter should be incarcerated; from review of the forensic evaluation report and its conclusions and based upon stipulation of both Plaintiff and Defendant, the Court would find that Mr. Hunter is in need of continued psychiatric care and treatment. From the findings of the forensic evaluators, that treatment is likely to aid in Mr. Hunter's rehabilitation and if he is confined to State Security Hospital, both the interests of both Mr. Hunter and society will be protected.

"*I will therefore order Mr. Hunter's confinement to the State Security Hospital for the term imposed of the standard sentencing range of 130 months.*

"In the event that during that term the State Security Hospital determines that your placement is more appropriate elsewhere, by law the State Security Hospital is to contact this District Court for further hearing to determine whether or not that transfer is advisable. Otherwise, sir, you will be at the State Security Hospital. . . .

. . . .

"[T]his *sentence* would be imposed consecutive to that Douglas County case." (Emphases added.)

Also on September 21, 2007, the district court completed a Kansas Sentencing Guidelines Journal Entry of Judgment which showed that Hunter was sentenced to an underlying prison term of 130 months and added under "Additional Comments" the "Court authorizes defendant to receive treatment at the State Security Hospital pursuant to K.S.A. 22-3430. See separate order."

On the same day, the district court completed an Order of Commitment for Care, Treatment, and Maintenance Pursuant to K.S.A. 22-2430. In that order the district court ordered that Hunter be committed to the custody of the Superintendent of the State Security Hospital for "psychiatric care, treatment, and maintenance, pursuant to the provisions of K.S.A. 22-3430 until further order of the Court or until discharged pursuant to K.S.A. 22-3431" and that under no circumstances should Hunter's term of commitment exceed 130 months.

On September 26, 2007, the Sheriff of Pawnee County sent notice to the Secretary of Corrections, stating that Hunter had "been sentenced to be confined to the Secretary of Corrections" for a period of 130 months. On October 3, 2007, the KDOC sent a letter to

the district court stating that it understood that Hunter had been sentenced to 130 months, to be served consecutively to the 29- to 110-year indeterminate sentence. It further stated that once Hunter was paroled or reached his conditional release date, it intended to release Hunter from KDOC custody to the custody of LSSH to serve this 130-month sentence. It then stated, "If this is not the intent of the Court, please advise us."

On appeal before us, Hunter argues that his sentence is illegal because the district court lacked the authority to impose a KSGA sentence—the underlying prison term—after ordering his commitment to LSSH. The present appeal is not the first sentencing challenge that Hunter has raised to his 130-month sentence. Previously, Hunter has moved to modify this sentence to get credit for time served. In that case, the Court of Appeals determined that Hunter "was not committed to the state hospital in lieu of sentencing. Instead, he was sentenced under the KSGA." *State v. Hunter*, No. 124,087, 2022 WL 497638, at *2 (Kan. App. 2022) (unpublished opinion). That panel therefore found that the district court lacked jurisdiction to modify a legal KSGA sentence after it had been imposed. *Hunter*, 2022 WL 497638, at *2.

Hunter's legal argument in this appeal stems from this 2022 ruling. Hunter argues that because the commitment statutes, K.S.A. 22-3431 specifically, allow a district court to modify the terms of a defendant's commitment if certain conditions are met, his "un-modifiable" underlying KSGA sentence creates an ambiguity as to the term of his sentence.

The district court stated, in its order in response to Hunter's 2024 motion to correct an illegal sentence, that if the conditions of K.S.A. 22-3431 were met, it believed it had the authority to order any of the statutorily authorized dispositions of Hunter's case. Such dispositions include options like discharge, probation, or a remand to the KDOC to serve the remaining balance of the sentence. In its appellate brief, the State agreed with the district court. Hunter disagrees, and so do we.

ANALYSIS

Hunter argues that his sentence is illegal because the district court had no ability to sentence him after it decided to commit him. He argues that sentencing may only legally happen after a commitment pursuant to the result of a hearing under K.S.A. 22-3431. In evaluating Hunter's argument, we must determine what actually happened at Hunter's sentencing hearing on September 21, 2007.

In 2022, a panel of the Court of Appeals found that Hunter "was not committed to the state hospital in lieu of sentencing. Instead, he was sentenced under the KSGA." 2022 WL 497638, at *2. However, in the present case, the panel found that the district court "tried to do [both]"—both sentence and commit Hunter. *Hunter*, 2025 WL 2631391, at *4.

The record clearly indicates that the district court meant to sentence Hunter under the KSGA to a term of commitment at LSSH. This is consistent with the State's factual framing in its appellate brief. There the State argues that "[t]he district court correctly followed the recommendation of the parties and imposed a prison sentence with confinement at the state security hospital under K.S.A. 22-3430."

Based on this understanding of the record, that Hunter was "sentenced" to a term of "commitment," we must address the central dispute in this case—whether such a commitment or a sentence is illegal.

Whether a sentence is illegal is a question of law over which appellate courts exercise unlimited review. See *State v. Daniels*, 319 Kan. 340, 342, 554 P.3d 629 (2024). The interpretation of sentencing statutes is a question of law, and the standard of review is unlimited. *State v. Moore*, 309 Kan. 825, 828, 441 P.3d 22 (2019).

An illegal sentence is a sentence: (1) imposed by a court without jurisdiction; (2) that does not conform to the applicable statutory provisions, either in character or the term of punishment; or (3) that is ambiguous about the time and manner in which it is to be served. K.S.A. 22-3504(c)(1); see *State v. Mitchell*, 315 Kan. 156, 159, 505 P.3d 739 (2022). A court may correct an illegal sentence at any time while the defendant is serving the sentence. K.S.A. 22-3504(a). An illegal sentence may be corrected for the first time on appeal and may be addressed sua sponte. *State v. Gomez*, 320 Kan. 3, 22, 561 P.3d 908 (2025); *State v. Zongker*, 319 Kan. 411, 436-37, 555 P.3d 698 (2024).

Judicial Estoppel

The State suggests in its briefing that the court should apply judicial estoppel and avoid this question altogether. It argues that judicial estoppel should prevent Hunter from taking inconsistent legal positions within the same case. The State argues this doctrine applies because Hunter requested to serve his "sentence" at LSSH originally, but he now argues that he could not be sentenced at that time. Hunter did not respond to the judicial estoppel argument.

To support its position, the State defines judicial estoppel by citing to a federal practice treatise and one Supreme Court case, *New Hampshire v. Maine*, 532 U.S. 742, 749-50, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001). The State explains that judicial estoppel "'generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase.'" 532 U.S. at 749.

We find the State has not adequately briefed its judicial estoppel argument. It has not mentioned or cited any caselaw discussing how judicial estoppel has been applied in Kansas or other jurisdictions, discussed whether there may be an exception to the

"general" judicial estoppel rule in the context of illegal sentences—which may be corrected at any time, or explained how the State's position interacts with our clear rule that parties may not agree upon an illegal sentence. *State v. Lehman*, 308 Kan. 1089, 1093, 427 P.3d 840 (2018) ("But we do not allow the parties to agree upon or stipulate to an illegal sentence."). Importantly, the State does not address whether it is relevant that Hunter has previously taken the position that he was currently committed in lieu of *sentencing* and has brought this argument only after the Court of Appeals held otherwise. *Hunter*, 2022 WL 497638, at *2. We therefore find that the State has waived its judicial estoppel argument. *State v. Gallegos*, 313 Kan. 262, 277, 485 P.3d 622 (2021) (issues not adequately briefed are deemed waived or abandoned).

Hunter's Commitment Was Not Properly Ordered

Hunter argues, and the panel agreed, that an order of commitment under K.S.A. 22-3430 cannot simultaneously be imposed with an underlying KSGA prison sentence, because commitment is a process done in lieu of sentencing. We begin with the language of the statutes.

K.S.A. 22-3429 (Torrence 2007) states: "After conviction and prior to sentence and as part of the presentence investigation" the district court may "order the defendant committed for mental examination, evaluation and report." Thus, it is clear that any evaluation must be done prior to sentencing.

K.S.A. 22-3430 (Torrence 2007) then states:

> "(a) If the report of the examination authorized by K.S.A. 22-3429 and amendments thereto shows that the defendant is in need of psychiatric care and treatment, that such treatment may materially aid in the defendant's rehabilitation and that the defendant and society are not likely to be endangered by permitting the defendant to

receive such psychiatric care and treatment, *in lieu of confinement or imprisonment, the trial judge shall have power to commit such defendant to: (1) The state security hospital* or any county institution provided for the reception, care, treatment and maintenance of mentally ill persons, if the defendant is convicted of a felony; or (2) any state or county institution provided for the reception, care, treatment and maintenance of mentally ill persons, if the defendant is convicted of a misdemeanor. *The court may direct that the defendant be detained in such hospital or institution until further order of the court or until the defendant is discharged under K.S.A. 22-3431 and amendments thereto. No period of detention under this section shall exceed the maximum term provided by law for the crime of which the defendant has been convicted.* The cost of care and treatment provided by a state institution shall be assessed in accordance with K.S.A. 59-2006 and amendments thereto.

"(b) No defendant committed to the state security hospital pursuant to this section upon conviction of a felony shall be transferred or released from such hospital except on recommendation of the staff of such hospital.

"(c) *The defendant may appeal from any order of commitment made pursuant to this section in the same manner and with like effect as if sentence to a jail*, or to the custody of the secretary of corrections *had been imposed*." (Emphases added.)

K.S.A. 22-3430 does *not* discuss commitment pursuant to sentencing. Instead, it clearly indicates that an order of commitment is distinct from sentencing. Subsection (c) allows a defendant to appeal a commitment order in the same way as if a sentence "had been imposed." Subsection (a) allows a district court to order commitment until either "further order of the court or until the defendant is discharged under K.S.A. 22-3431." Subsection (a) sets a maximum term of commitment as being the maximum possible prison sentence. Such maximum terms are calculated regularly. At no point does K.S.A. 22-3430 reference the end of a term of commitment being authorized by the expiration of a previously imposed prison sentence. We find the plain language of K.S.A. 22-3430 clearly shows that a commitment order must be made in lieu of *sentencing*.

We take a moment to distinguish our statutory interpretation from that of the panel. The panel relied on K.S.A. 22-3431 which states in part:

> "(a) Whenever it appears to the chief medical officer of the *institution to which a defendant has been committed under K.S.A. 22-3430*, and amendments thereto, that the defendant will not be improved by further detention in such institution, the chief medical officer shall give written notice thereof to the district court where the defendant was convicted. Such notice shall include, but not be limited to: (1) Identification of the patient; (2) the course of treatment; (3) a current assessment of the defendant's psychiatric condition; (4) recommendations for future treatment, if any; and (5) recommendations regarding discharge, if any.
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> . . . .
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> "(c) *At the hearing, the defendant shall be sentenced, committed, granted probation, assigned to a community correctional services program, as provided by K.S.A. 75-5291, and amendments thereto, or discharged as the court deems best under the circumstance. . . . The time spent in a state or local institution pursuant to a commitment under K.S.A. 22-3430, and amendments thereto, shall be credited against any sentence, confinement or imprisonment imposed on the defendant.*" (Emphases added.)

The panel found that because subsection (c) contemplates that a defendant could be "sentenced" following a hearing, such a sentence must follow a defendant's discharge from LSSH, not before. *Hunter*, 2025 WL 2631391, at *4. However, the list also includes being "committed"—which the defendant, by definition, already must be, or he or she wouldn't be subject to K.S.A. 22-3431. The list also includes being placed on probation, which necessarily requires a sentence. See K.S.A. 21-6603(g) ("'[P]robation' means a procedure under which a defendant, convicted of a crime, is released by the court *after imposition of a sentence*. . . .").

In short, this provision does not clearly require that a defendant not already have a sentence. However, K.S.A. 22-3430 clearly creates the requirement that an order of commitment must be done in lieu of sentencing. When construing statutes to determine legislative intent, appellate courts must consider various provisions of an act *in pari materia* to reconcile and bring the provisions into workable harmony if possible. *State v. Strong*, 317 Kan. 197, 203, 527 P.3d 548 (2023). When read together, K.S.A. 22-3430 and K.S.A. 22-3431 allow a district court to impose a range of dispositions, including further commitment or, upon deciding that further commitment is not appropriate, a court may proceed to sentencing.

The panel also placed special emphasis on the phrase "in lieu of confinement or imprisonment" found in K.S.A. 22-3430(a). *Hunter*, 2025 WL 2631391, at *4. Factually speaking, the district court here ordered "*confinement* to the State Security Hospital" for 130 months. (Emphasis added.) Such an order of "confinement" to LSSH violates the language of K.S.A. 22-3430(a) by its own terms.

We also note that other cases have described commitment orders and the procedures governing them in a manner consistent with today's interpretation. See *State v. Godfrey*, 301 Kan. 1041, 1042, 350 P.3d 1068 (2015) ("Godfrey originally understood that the recommendation was for a Larned placement in lieu of sentencing pursuant to K.S.A. 22-3430."); *State v. Kelly*, 291 Kan. 868, 870, 248 P.3d 1282 (2011) ("After accepting Kelly's plea, the court followed the plea agreement and committed Kelly for treatment in lieu of imprisonment, pursuant to K.S.A. 22-3430 [Ensley 1988]. However, Kelly was subsequently released from Larned and returned for sentencing in June 1991."); *State v. Hildebrandt*, 270 Kan. 1, Syl. ¶ 1, 4, 12 P.3d 392 (2000) ("When a convicted felon who has been committed to Larned State Security Hospital in lieu of sentencing pursuant to K.S.A. 22-3430 is ordered returned to the trial court for further disposition, he or she is to be 'sentenced, committed, granted probation, assigned to a community correctional services program or discharged as the court deems best under the

circumstances' as specifically stated in K.S.A. 22-3431[c]." The language in K.S.A. 22-3431 allows "the court to sentence a defendant who was first committed to LSSH in lieu of sentencing as it 'deems best under the circumstance.'"); *State v. White*, 263 Kan. 283, 315, 950 P.2d 1316 (1997) ("The staff recommended that White be committed to Larned for care and treatment in lieu of sentencing under the provisions of K.S.A. 22-3430. The Larned staff thought White should be sentenced for his crime only after he had been treated for his psychotic disorder."); *State v. Harkness*, 252 Kan. 510, 518, 847 P.2d 1191 (1993) ("With regard to sentencing, on June 28, 1982, the trial court, pursuant to K.S.A. 22-3430 and K.S.A. 22-3431, ordered the defendant committed to Larned until further order of the court. In November 1990, the trial court determined, based upon reports generated by the staff at Larned and pursuant to K.S.A. 22-3431, that Harkness should be released from Larned and sentenced. The defendant was sentenced on January 2, 1991."); *State v. Heywood*, 245 Kan. 615, 616, 783 P.2d 890 (1989) ("Pursuant to K.S.A. 22-3430, Heywood was committed to the Larned State Hospital for treatment in lieu of sentencing. On January 9, 1987, approximately two years later, Heywood was returned from Larned and sentenced . . . .").

We acknowledge there are a few cases in which a district court has sentenced a defendant before ordering commitment and then suspended the execution of that sentence. None of those cases challenged the imposition of the sentence as illegal, so the court did not reach that issue. We also note that Hunter's case does not involve a suspended sentence. See *State v. Prewett*, 246 Kan. 39, 40, 785 P.2d 956 (1990) ("Prewett was sentenced to life imprisonment on each count of murder and aggravated kidnapping. For aggravated sodomy and rape, Prewett was sentenced to not less than fifteen years nor more than life on each count. Finally, Prewett was sentenced to not less than three nor more than ten years for each of the two counts of enticement of a child. The sentences on the two counts of murder are to be served consecutively and all other sentences are to run concurrently with the murder sentences. The district court suspended execution of the sentences and Prewett was committed to the Larned State Security

Hospital in lieu of imprisonment pursuant to K.S.A. 22-3430."); *State v. Lawton*, 241 Kan. 140, 142, 734 P.2d 1138 (1987) ("The trial court sentenced defendant to consecutive sentences and then suspended the sentences and committed defendant to Larned State Security Hospital pursuant to K.S.A. 22-3430.").

Turning back to the instant case, the record is clear that Hunter was "sentenced to commitment." Hunter was unquestionably sentenced under the KSGA. Even Hunter's own argument is couched as a challenge to an illegal sentence. As discussed, the commitment statutes do not allow a district court to commit Hunter while also imposing a KSGA sentence. Therefore, unlike the panel, we conclude that Hunter's term of commitment was imposed in error and must be vacated.

Hunter's KSGA Sentence Was Illegal

As discussed, the district court sentenced Hunter to 130 months' imprisonment with confinement to LSSH, in the custody of the Superintendent of LSSH. The KDOC clearly indicated its understanding in its 2007 letter that once Hunter began serving his 130-month sentence, he would not be in KDOC custody. Thus, the district court "sentenced Hunter to a term of commitment."

At the time of Hunter's sentencing, K.S.A. 21-4603d (Torrence 2007) governed the authorized dispositions of crimes committed on or after July 1, 1993. Nowhere in that statute is a mechanism that allows a district court to sentence a defendant to the custody of the superintendent of a state security hospital pursuant to commitment proceedings. K.S.A. 21-4603d(a)(1) (Torrence 2007) instead shows that if the crime of conviction is a felony and the sentence presumes imprisonment, as in Hunter's case, the court may commit the defendant to the custody of the Secretary of Corrections.

It is worth noting that there exists a mechanism for what it appears the district court attempted to do in Hunter's case. Following the imposition of such a prison sentence, the KDOC may arrange for an inmate to be transferred to a state security hospital, pursuant to K.S.A. 75-5209. During this time, the inmate's sentence continues to run. However, an important distinction is that under this statute, it is the Secretary of Corrections which manages this procedure—not an order of the district court. See K.S.A. 75-5209.

A sentence is illegal when it does not conform to the applicable statutory provisions, either in character or the term of punishment. K.S.A. 22-3504(c)(1). Here, the district court imposed a sentence which did not follow any of the available statutorily authorized provisions. Thus, we find that Hunter's 130-month sentence was illegal.

CONCLUSION

Similarly to the panel, we find that the district court "tried to do two things at one time and could not legally do so." *Hunter*, 2025 WL 2631391, at *4. However, unlike the panel, we find that the district court failed to accomplish either of those things. Legally, Hunter's commitment could not be ordered as part of his sentence and Hunter could not be sentenced to commitment. We therefore vacate both Hunter's order of commitment and 130-month KSGA sentence and remand Hunter's case to the district court for resentencing.

Judgment of the Court of Appeals vacating the sentence is affirmed. Judgment of the district court is vacated, and the case is remanded with directions.