

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
Representative Stephen Owens, Chairman

KANSAS SENTENCING COMMISSION
Scott Schultz, Executive Director
January 24, 2023

Proponent Testimony – HB 2069

Thank you for the opportunity to present testimony in favor of this legislation on behalf of the Kansas Sentencing Commission.

The Kansas Sentencing Commission supports HB 2069. HB 2069 is an attempt to clarify how jail credit is awarded when a person is in custody on awaiting disposition on a new criminal charge while at the same time is an alleged postrelease supervision violator, arrested pursuant to a warrant issued by the Secretary of Corrections.

Historically, the Kansas Department of Corrections (KDOC) has been of the opinion that it must credit such jail time to the Postrelease Supervision Period and that jail credit should not be awarded to the new pending criminal case. However, recent case law has determined that such jail credit should be awarded toward any new sentence imposed and that service of the Postrelease Supervision period should be tolled. Such was the determination by the Kansas Court of Appeals in *State v. Brown*, No. 119,085, 435 P.3d 597 (2019), *unpublished opinion attached*. This has resulted in conflicting sentencing journal entries and numerous instances of staff of KDOC’s Sentence Computation Unit having to appear at district court sentencing hearings.

A simple example illustrates the issue resolved by HB 2069. John Smith has been convicted of crime “A”; sentenced to prison and after serving the prison portion of his sentence is released to Postrelease Supervision for a period of 36 months. Shortly, thereafter John Smith is arrested for allegedly committing a new crime “B” and is placed in the county jail to await trial for crime “B”. Simultaneously, KDOC issues a warrant charging Smith with having violated the conditions of his postrelease supervision and provides a copy of that warrant to the sheriff holding Smith in the county jail. Smith cannot post bond on the KDOC warrant and therefore may not be released from jail. HB 2069 would provide that Smith would receive credit towards service of his postrelease supervision obligation, but he would not receive credit for “jail credit” toward any potential sentence imposed for crime “B”.

There is some contention that Smith should be awarded jail credit toward service of the potential future sentence and that service of the postrelease supervision obligation should stop while Smith is in jail. KDOC has determined that tolling the running of the postrelease supervision period is contrary to K.S.A. 75-5217(f), which allows for the tolling of the service of the postrelease supervision period only when the postrelease has absconded. Additionally, K.S.A. 22-3722 provides:

“The period served on parole or conditional release shall be deemed service of the term of confinement, and, subject to the provisions contained in K.S.A. 75-5217, and amendments thereto, relating to an inmate who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. The period served on postrelease supervision shall vest in and be subject to the provisions contained in K.S.A. 75-5217, and amendments thereto, relating to an inmate who is a fugitive from or has fled from justice. The total time served shall not exceed the postrelease supervision period established at sentencing.” (Emphasis added).

Finally, the Court of Appeals in *Hooks v. State*, 51 Kan. App 2d 527, 349 P.3d 476 (2015) held:

“..K.S.A. 2014 Supp. 21-6615(a), which requires the sentencing court to provide a credit for any time the defendant spent incarcerated pending disposition of the defendant’s case. With that said, a defendant is entitled to this credit for time spent in custody only when he or she is being held *solely* on the charge for which the defendant is being sentence.” (Emphasis in the original). (*Hooks* at 531).

Therefore, Mr. Smith should not be entitled to jail credit towards any future sentence imposed for crime “B” since he is getting credit for service of postrelease supervision. In fact, he may not receive credit for both since he must have consecutive sentences imposed for crimes committed while on postrelease supervision.

Further, HB 2069 is in line with the intent of Special Sentencing Rule #9 in K.S.A. 21-6604(f)(1), which requires any new sentence to be imposed consecutive to any case for which an offender was on postrelease supervision at the time the new offense was committed.

I appreciate your time and attention to the Kansas Sentencing Commission testimony, ask for your support, and would be happy to answer questions. Thank you.

435 P.3d 597 (Table)

Unpublished Disposition

This decision without published opinion is referenced in the Pacific Reporter. See Kan. Sup. Ct. Rules, Rule 7.04.

NOT DESIGNATED FOR PUBLICATION

Court of Appeals of Kansas.

STATE of Kansas, Appellee,

v.

Darris Levelle BROWN, Appellant.

No. 119,085

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Opinion filed March 1, 2019.

Appeal from Saline District Court; RENE S. YOUNG, judge.

Attorneys and Law Firms

Sam Schirer, of Kansas Appellate Defender Office, for appellant.

Ellen Hurst Mitchell, county attorney, and Derek Schmidt, attorney general, for appellee.

Before Arnold-Burger, C.J., Atcheson, J., and Burgess, S.J.

MEMORANDUM OPINION

PerCuriam:

*1 Darris Levelle Brown appeals the district court's denial of his request for additional jail credit. Brown contends, rather than crediting jail time to his term of unrevoked postrelease supervision from an earlier case, the district court should have awarded that same time as jail credit to his sentence in this case. We agree. Since jail credit may not be applied to unrevoked terms of postrelease supervision, the district court erred in denying Brown's motion. As a result, we reverse and order that the time Brown was incarcerated between January 2014 and January 2015 be credited in this current case.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2014, the State charged Brown with child abuse, aggravated battery, interference with law enforcement, and four counts of misdemeanor battery. When he committed the 2014 crimes, Brown was on postrelease supervision in

a 2009 case- 09CR658. Brown was detained in the Saline County jail on January 12, 2014. One day later, the Kansas Department of Corrections (KDOC) issued an arrest and detain order against Brown for potentially violating the conditions of his postrelease supervision in his 2009 case. However, the KDOC never revoked Brown's postrelease supervision.

One year after the KDOC issued the detention order, Brown posted bond and was released from custody on January 13, 2015. About two months later, the State moved to revoke Brown's bond and the district court issued a bench warrant. Brown was placed back in jail on April 21, 2015.

Brown pled no contest to amended charges of child abuse and misdemeanor domestic battery in his 2014 case. On December 2, 2015, the district court sentenced Brown to a controlling prison term of 84 months. The district court ordered this sentence to run consecutive to Brown's 2009 sentence.

During sentencing, the parties disputed whether Brown should receive jail credit in his 2014 case for the period between January 12, 2014, and January 13, 2015, which he spent in jail on hold for potentially violating his postrelease supervision. The State argued the jail time should be awarded in the 2009 case, and Brown argued the time should be awarded to the 2014 case. The district court ordered the parties to prepare a journal entry with the "correct jail time credit." Although the district court did not determine which case the jail time should be credited, it noted that Brown was not entitled the jail credit on both cases.

After sentencing, the district court filed a journal entry of judgment. The journal entry shows that Brown was awarded 225 days of jail credit towards his 2014 sentence. The jail credit award reflects Brown's time served from April 21, 2015, to December 2, 2015. Importantly, the award does not include any credit for the time Brown served in jail from January 12, 2014, to January 13, 2015. The journal entry does not reflect whether this jail time was credited in Brown's 2009 case.

In August 2016, Brown sent a letter to the district court, requesting additional jail credit to his sentence in the 2014 case. The district court held a hearing on Brown's request. At this hearing, Brown argued he should receive additional jail credit for the time served between January 12, 2014, and January 13, 2015.

*2 Employees of the KDOC and Saline County Sheriffs Office testified at the jail credit hearing. Lieutenant Lisa Graham testified that Brown was in jail from January 12, 2014, to January 13, 2015, on the 2014 case. The witnesses explained that on January 13, 2014, the KDOC placed a hold on Brown by issuing the detention order and obtaining a subsequent warrant. The hold was in place until Brown completed the term of his postrelease supervision on January 13, 2015. The witnesses confirmed that Brown's postrelease supervision was never revoked.

Michelle Sullivan testified that Brown's completion of his postrelease period triggered the KDOC to withdraw the postrelease violation warrant and lift its hold. As a result, Brown was able to post bond and be released from jail on January 13, 2015. Sullivan explained the KDOC credited Brown for the time served from January 12, 2014, to January 13, 2015, towards satisfying his postrelease supervision period in the 2009 case.

After hearing the evidence, the district court denied Brown's request for additional jail credit. The district court found that Brown's postrelease supervision was never revoked. However, the district court determined that Brown was not entitled to receive the additional jail credit because the time served between January 12, 2014, and January 13, 2015, was credited in the 2009 case. Brown appeals.

ANALYSIS

On appeal, Brown contends the district court erred by denying his request for additional jail credit to his sentence in the 2014 case. Brown argues that because his postrelease supervision was never revoked, the district court was required to credit the time he served in jail from January 12, 2014, to January 13, 2015, to his sentence in the 2014 case. The State responds that the district court properly denied Brown's request for jail credit because "the record establishes that Brown had already received the disputed days as credit against a term of unrevoked post-release supervision."

Our review of the district court's jail credit award requires interpreting the Kansas Sentencing Guidelines Act. Interpretation of sentencing statutes is a question of law over which we exercise unlimited review. *State v. Collins*, 303 Kan. 472, 473-74, 362 P.3d 1098 (2015).

Kansas provides a statutory right to jail time credit. *State v. Hopkins*, 295 Kan. 579, 581, 285 P.3d 1021 (2012). Under K.S.A. 2017 Supp. 21-6615(a), a defendant's sentence starting date is computed to allow credit for "the time which the defendant has spent incarcerated pending the disposition of the defendant's case." Our Supreme Court has clarified that a defendant is entitled to jail credit for all time held in custody solely on the charge for which the defendant is being sentenced. *State v. Harper*, 275 Kan. 888, 890, 69 P.3d 1105 (2003).

There is no statutory right for credit beyond the time an individual is incarcerated in jail. *State v. Lofton*, 272 Kan. 216, 217-18, 32 P.3d 711 (2001). Instead, a defendant receives one day of credit towards a sentence for each day spent in pretrial detention. A defendant may not receive double credit for time served in pretrial detention on multiple cases. See 272 Kan. at 217-18 (defendant not entitled to credit for pretrial detention towards each of two sentences to be served consecutively, since that would result in a double counting).

This court has repeatedly held that a defendant may not receive jail credit towards an unrevoked term of postrelease supervision for time spent incarcerated on a new charge which results in a conviction and sentence. *White v. Bruce*, 23 Kan. App. 2d 449, Syll. ¶ 2, 932 P.2d 448 (1997); *State v. McLemore*, No. 116,119, 2017 WL 6625552, at *2 (Kan. App. 2017) (unpublished opinion) (listing cases). Instead, postrelease supervision is suspended until the completion of the new sentence, unless the State revokes that supervision. 2017 WL 6625552, at *2.

*3 Here, the district court determined that Brown received jail credit from January 12, 2014, to January 13, 2015, on his term of unrevoked postrelease supervision in the 2009 case. But Brown's incarceration in January 2014 suspended his postrelease supervision. As a result, Brown was not serving his postrelease supervision term during the time he was in jail. See *State v. Watkins*, No. 96,218, 2007 WL 2178070, at *3 (Kan. App. 2007) (unpublished opinion). Because Brown's postrelease supervision was never revoked, the period of jail time at issue was credited to a sentence that Brown was never ordered to serve. *McLemore*, 2017 WL 6625552, at *2. The district court erred by allowing the jail time to be credited towards Brown's term of unrevoked postrelease supervision in the 2009 case.

Since Brown was not serving his postrelease supervision term, he was incarcerated from January 12, 2014, to January

13, 2015, solely on the charges in the 2014 case. Accordingly, Brown was entitled to receive credit for that jail time towards his sentence in this 2014 case. The action of KDOC in crediting this time against Brown's postrelease supervision term, was in derogation of Kansas law. See *McLemore*, 2017 WL 6625552, at *2. The district court erred by denying Brown's request for additional jail credit to his sentence in the 2014 case.

The district court's order denying Brown's motion for additional jail time is reversed. It is ordered that the time served from January 12, 2014, to January 13, 2015, be credited towards Brown's sentence in this 2014 case. It is also ordered that any jail time credited towards Brown's postrelease supervision term in the 2009 case for time

served during this period be set aside. See *State v. Blazier*, No. 116,148, 2017 WL 3575656, at *2 (Kan. App. 2017) (unpublished opinion) ("When [the] potential for double credit arises, a court may correct the amount of jail time credit after sentencing."); also see *State v. Storer*, 53 Kan. App. 2d 1, 5,382 P.3d 467 (2016) (reasoning that K.S.A. 22-3504[2] allows a court to correct clerical mistakes, such as most jail credit determinations, at any time).

Reversed and remanded with directions.

All Citations

435 P.3d 597 (Table), 2019 WL 985992