

NO. 09-103010-A

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

**IN THE MATTER OF K.F.
JUVENILE-APPELLANT**

**STATE OF KANSAS
APPELLEE**

FILED

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**CAROL G. GREEN
CLERK OF APPELLATE COURTS**

BRIEF OF APPELLEE

**Appeal from the District Court of Mitchell County, Kansas
Honorable Kim W. Cudney, Judge
District Court Case No. 07-JV-04**

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ORAL ARGUMENT: 25 minutes

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NATURE OF THE CASE

The Appellant was sentenced both in juvenile and adult court under extended juvenile jurisdiction. After the Appellant failed to fulfill the terms of her conditional release, the State filed a Motion for revocation of conditional release and for the imposition of the adult sentence. In response, the Appellant filed a Motion to Modify the Sentence. The Court sustained the State's motion and denied the Appellant's motion after hearing. The Court gave the Appellant credit for time served on the Mitchell County Case and refused to give credit for time served on other cases from other counties.

STATEMENT OF FACTS

The Statement of Facts contained in the Appellant's Brief is essentially correct and those facts are not in dispute.

The Appellee adds these additional facts:

The Appellant was at the Beloit Juvenile Correctional Facility four times, was released on conditional release three times and returned because of

conditional release violations. (R. III, 14 & 15) During the time that the Appellant was at the Beloit Juvenile Correctional Facility, she was not invested in any programming or participation in groups. (R. III, 20 & 21 & 22 & 23) During her stay at the Beloit Juvenile Correctional Facility, there was an incident where she hit an officer in the back and was physically restrained. (R. III, 22)

STATEMENT OF ISSUES

1. DID THE COURT PROPERLY FIGURE CREDIT FOR TIME SERVED FOR THE APPELLANT BY NOT INCLUDING TIME SERVED FOR OTHER CASES FROM OTHER COUNTIES?
2. WAS THERE SUFFICIENT SUBSTANTIAL COMPETENT EVIDENCE TO SUPPORT A REVOCATION OF THE APPELLANT'S CONDITIONAL RELEASE AND THE IMPOSITION OF THE ADULT SENTENCE?
3. WHETHER THE COURT EXERCISED PROPER JUDICIAL DISCRETION IN DENYING THE APPELLANT'S MOTION TO MODIFY SENTENCE.

ARGUMENT & AUTHORITIES

1. THE COURT PROPERLY FIGURE CREDIT FOR TIME SERVED FOR THE APPELLANT BY NOT INCLUDING TIME SERVED FOR OTHER CASES FROM OTHER COUNTIES.

The Appellant was on conditional release for a Wyandotte County case, 2005-JV-1159, when she was picked up and placed back in the Beloit Juvenile Correctional Facility for violation of her conditional release in Wyandotte County. In Mitchell County Cases 2006-JV-24 and 2006-JV-31 and 2007-JV-04, the Juvenile was sentenced on July 19, 2007. In addition, the Appellant was awarded 48 days credit for time already served. The Appellant was ordered to serve 12

months in the Juvenile Correctional Facility on the juvenile sentence and 32 months in the Department of Corrections on her adult sentence. For whatever reason, the Mitchell County cases were never provided to JJA for incarceration. If they had, she would have not been on conditional release under the Wyandotte County case. Under K.S.A. 21-4614, a defendant is to be given credit for time served for the time the defendant spent incarcerated on the case. Under K.S.A. 38-2364(b), the juvenile-offender is to be credited for time served in a juvenile correctional facility on the juvenile sentence as time served on any adult sentence. *State of Kansas v. Bird*, 24 Kan. App. 2d 380, 945 P.2d 417 (1997), and *State of Kansas v. Hartman*, 27 Kan. App. 2d 98, 998 P.2d 128 (2000) have all interpreted K.S.A. 21-4614 to say the defendant is precluded from receiving credit for time spent in custody awaiting sentences in other counties. In this case, the Appellant was spending time at Beloit Juvenile Correctional Facility for a sentence out of Wyandotte County and not out of Mitchell County. The Court properly afforded her a credit of 34 days, which represents her time in the Mitchell County Jail from April 23, 2009, to May 27, 2009.

2. THERE WAS SUFFICIENT SUBSTANTIAL COMPETENT EVIDENCE TO SUPPORT A REVOCATION OF THE APPELLANT'S CONDITIONAL RELEASE AND THE IMPOSITION OF THE ADULT SENTENCE.

A more than ample amount of substantial competence evidence was presented to support the Court's finding that the Appellant violated the terms of conditional release in the Wyandotte County case.

Not only was her testimony from the JJA Case Manager of the Twelfth Judicial District concerning the Appellant's behavior on the Wyandotte County case, but there was also the additional testimony of Jennifer Eilert, the Program Director at the Beloit Juvenile Correctional Facility. Ms. Eilert brought with her three notebooks containing records of the Appellant's activities while she was at the Beloit Juvenile Correctional Facility serving her sentence under the Wyandotte County case. Ms. Eilert's testimony included that the Appellant failed to complete her conditional release on three separate occasions and when she was in the Beloit Juvenile Correctional Facility, she was not invested in the program, she did not regularly attend classes while on conditional release, and she hit an officer in the back while at the Facility but no charges were filed on that.

The Appellant argues that the Court had the authority under K.S.A. 22-3716(b) to re-sentence the Appellant. The latest case on this issue is *In the Matter of E.F.*, 41 Kan. App. 2d 860, 205 P.3d 787 (2009). In *E.F.*, supra, E.F. failed to meet the terms of his juvenile sentence and on motion of the juvenile, the Court granted adult probation rather than imposing the adult prison sentence that had previously been ordered. The State in *E.F.*, supra, appealed the decision that placed the juvenile on probation under the adult sentence.

The Court quoted:

"The district court granted adult probation even though K.S.A. 2008 Supp. 38-2364(b) provides that when a court finds that a juvenile has violated the juvenile sentence as, E.F. did, the court 'shall revoke the juvenile sentence and order the imposition of the adult sentence previously ordered.' Our court has already held that this language means what it says: when its terms are met, the statute 'compels incarceration' and

leaves the district court no room to consider other alternatives. *State v. J.H.*, 40 Kan. App. 2d 646-47.”

The Court held at the end of their opinion on page 865:

“We conclude *J.H.* properly interpreted the statutory language now found in K.S.A. 2008 Supp. 38-2364. When the district court finds that the offender has violated the conditions of the juvenile sentence, the court must impose the adult sentence.”

3. THE COURT EXERCISED PROPER JUDICIAL DISCRETION IN DENYING THE APPELLANT’S MOTION TO MODIFY SENTENCE.

The Appellant’s argument that the Court, under K.S.A. 38-2367, can go back and modify the sentence flies in the face of K.S.A. 38-2364 and *In the Matter of E.F.*, supra, which once again states on page 865 of that opinion:

“We conclude *J.H.* properly interpreted the statutory language now found in K.S.A. 2008 Supp. 38-2364. When the district court finds that the offender has violated the conditions of the juvenile sentence, the court must impose the adult sentence.”

Furthermore, K.S.A. 22-3716 applies to adult defendants who have been placed on probation or community corrections and then has violated that. In this case, the Appellant did not have the adult sentence imposed upon her until May 27, 2009. Any and all violations that occurred as a result of the Appellant’s failure to follow her conditions of release all occurred during her juvenile sentence and not during her adult sentence.

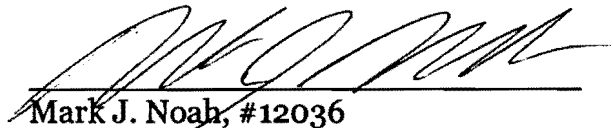
CONCLUSION

The Trial Court was correct in granting the Appellant credit for time served of 34 days. Her time at the Beloit Juvenile Correctional Facility and on conditional release was on the Wyandotte County case only.

The Court had more than substantial competent evidence to support the imposition of the adult sentence citing the Appellant's continued violation of at least three opportunities to conduct herself properly under conditional release and of her failure to appreciate the opportunities afforded her at the Beloit Juvenile Correctional Facility.

The Court should affirm the decision of the District Court whereby the Appellant was ordered to serve her adult sentence with a credit of 34 days.

Respectfully submitted,



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CERTIFICATE

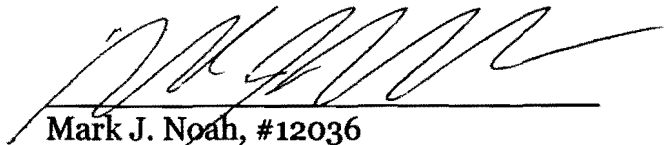
The undersigned certifies that two (2) copies of the above Brief of Appellee was this day mailed to:

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Dated this 24th day of November, 2009.



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