

No. 15-113991-A

**IN THE
COURT OF APPEALS OF
THE STATE OF KANSAS**

STATE OF KANSAS
Plaintiff-Appellee

Vs.

ANGEL UNRUH
Defendant-Appellant

BRIEF OF APPELLEE

Appeal from the District Court of Saline County, Kansas

Honorable Jared Johnson, Judge
District Court Case No. 14 CR 1151

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NATURE OF THE CASE

The defendant, Angel Unruh, plead no contest to one count of Unlawful Possession of a Controlled Substance. The district court found the defendant guilty and sentenced Ms. Unruh to 30 months in prison, consecutive to an earlier case, but suspended the sentence to 18 months probation. The defendant filed a motion objecting to credit for time served being applied to the earlier case. The district court denied the motion. The defendant has appealed.

STATEMENT OF THE ISSUE

THE DISTRICT COURT PROPERLY APPLIED JAIL TIME CREDIT TO THE EARLIEST CASE FOR WHICH THE DEFENDANT WAS BEING HELD.

STATEMENT OF FACTS

The defendant, Angel Unruh, was arrested for Unlawful Possession of a Controlled Substance on October 27, 2014. On January 7, 2015, the defendant pleaded guilty to possession of methamphetamine, a severity level five drug felony. (R. VIII, 12.) The defendant was sentenced on March 13, 2015, and the defendant's criminal history score was found to be a "C". (R. V, 4.) The defendant was sentenced to thirty months with the Kansas Department of Corrections, suspended to eighteen months probation with community corrections. (R. V, 9-11.) The sentence was ordered to run consecutive to her prior case, 13 CR 462. (R. V, 11; R. I, 41.) The defendant was being held on her current case as well as on a hold with KDOC for the prior case. (R. IV, 3.) The district court ordered the defendant's time served to be applied to the older case. (R. V, 11.) The defendant filed a motion objecting to the journal entry, and requesting that time served be applied to the newer case. (R. IX, 1-4.) The court denied the motion, as the cases are consecutive and the defendant was being held on the earlier case. (R. IX, 1-4.)

ARGUMENT AND AUTHORITIES

WHEN A DEFENDANT HAS BEEN HELD IN JAIL FOR MORE THAN ONE CASE, THE JAIL TIME CREDIT SHOULD BE APPLIED TO THE EARLIEST CASE FIRST.

The issue on appeal requires the court to interpret K.S.A. 2013 Supp. 21-6606 and 21-6615. Statutory interpretation is a question of law and the Appellate Court's review is unlimited. State v. Bryan, 281 Kan. 157, 159, 130 P.3d 85 (2006).

K.S.A. 2013 Supp. 21-6606(c) states:

Any person who is convicted and sentenced for a crime committed while on probation, assigned to a community correctional services program, on parole, on conditional release or on postrelease supervision for a felony shall serve the

sentence consecutively to the term or terms under which the person was on probation, assigned to a community correctional services program or on parole or conditional release.

K.S.A. 2013 Supp. 21-6615 states:

In any criminal action in which the defendant is convicted, the judge, if the judge sentences the defendant to confinement, shall direct that for the purpose of computing defendant's sentence and parole eligibility and conditional release dates thereunder, that such sentence is to be computed from a date, to be specifically designated by the court in the sentencing order of the journal entry of judgment. Such date shall be established to reflect and shall be computed as an allowance for the time which the defendant has spent incarcerated pending the disposition of the defendant's case.

In the current case, there is no dispute that at sentencing the defendant was being held in custody for a post-release supervision violation. (R. III, 3; R. IV, 3; R. V, 11; R. IX, 4.) The district court sentenced the defendant consecutively to the case for which she was being held on the violation. (R. V, 11.) The plain language of K.S.A. 21-6606 states that when a defendant is convicted of a new crime while on post-release supervision, the new sentence is to be served “consecutively to the term . . . under which the person was . . . on parole or conditional release.” “Consecutive” is defined as “Successive; succeeding one another in regular order; to follow in uninterrupted succession.” Black’s Law Dictionary 304 (6th ed. 1990). Likewise, “Consecutive sentences” is defined as “when one sentence of confinement is to follow another in point of time, the second sentence is deemed to be consecutive.” Id. If the new sentence is to be consecutive to the prior, the prior must be served first.

This court has held that a defendant, who is serving post-release supervision and is arrested for new charges, has his post-release supervision interrupted and suspended while he is

incarcerated on the new charges. White v. Bruce, 23 Kan. App. 2d 449, 455 (1997). “Therefore the time spent incarcerated did not vest as credit against his postrelease supervision term.” Id. However, the Kansas Supreme Court has held “. . . a defendant should be given credit by the sentencing court for each day spent in jail solely on account of the pending charge, for which the prisoner is later sentenced” State v. Calderon, 233 Kan. 87, 98 (1983).

The White decision leads to results that are inconsistent with the intent of the legislature. The plain language of K.S.A. 21-6606(c) states that a conviction for a crime committed while on postrelease supervision is to be served consecutive to the postrelease. To give a defendant double credit for time served would be time served concurrently. “Jail credit shall be awarded for time spent in custody by an offender pending disposition of charges on an earlier sentence if consecutive guidelines sentences are imposed on different dates.” Kan. Admin. Regs. 44-6-134(c). In the case at hand, if the defendant was held solely on the new charge, the time she was held would be applied, appropriately, only to the new charge. However, in this case, the defendant was being held on the earlier case, 13 CR 462, as well as the current case, 14 CR 1151.

Further, the White decision risks the potential of interrupting one sentence to serve another instead of serving multiple sentences consecutively. This court has stated:

“Consecutive sentences may not be treated collectively as one for the aggregate term of all, and the identity of the punishment for each must be preserved.” 24 C.J.S., Criminal Law § 1582. In other words, a consecutive sentence “is one which commences at the termination of another term of imprisonment to which [an] accused has been sentenced. A prisoner serving the first of several consecutive sentences is not serving the other sentences ... the prisoner serves only one sentence at a time.” 24 C.J.S., Criminal Law § 1582.

Price v. State, 28 Kan. App. 2d 854, 858 (2001). Credit for time served should not be applied to a new case when the older case, for which a defendant is being held, has not yet terminated.

Therefore, applying jail time credit to 13 CR 462 was appropriate.

CONCLUSION

The district court properly applied the defendant's jail time credit to a case for which she was being held. The district court's sentence and denial of the defendant's motion should be affirmed. In the alternative, this court should remand this case for the district court to consider testimony by KDOC that credit for time served has been applied to the defendant's post release supervision, and that the post release supervision has been discharged.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the above and foregoing Brief of Appellee was made by e-filing the original with the Clerk of the Appellate Courts; and by emailing a copy to the Appellate Defender's Office on this 3rd day of February, 2016 to:

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