IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 123,825

STATE OF KANSAS,
Appellee,

v.

BYRON K. JOHNSON,
Appellant.

SYLLABUS BY THE COURT

In 2011, the law in Kansas required a district court to score pre-1993 out-of-state convictions according to the comparable Kansas offense.

Review of the judgment of the Court of Appeals in an unpublished opinion filed December 23, 2021. Appeal from Wyandotte District Court; J. DEXTER BURDETTE, judge. Opinion filed April 28, 2023. Judgment of the Court of Appeals affirming the district court is affirmed. Judgment of the district court is affirmed.

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

Garett Relph, assistant district attorney, argued the cause, and *Daniel G. Obermeier*, assistant district attorney, *Mark A. Dupree Sr.*, district attorney, and *Derek Schmidt*, attorney general, were on the brief for appellee.

The opinion of the court was delivered by

STEGALL, J.: The State charged Byron K. Johnson with multiple sex crimes for sexual encounters with his then-minor stepdaughter between 2005 and 2009. A jury

convicted him of one count of rape and four counts of aggravated incest. In 2011, a court sentenced Johnson to 400 months in prison—272 months for rape and 32 months for each count of aggravated incest, with each count running consecutive. In doing so, the court gave Johnson a criminal history score of C based in part on a 1992 Illinois armed robbery conviction, designated as a person felony. Johnson directly appealed and the Court of Appeals affirmed Johnson's conviction in 2013. *State v. Johnson*, No. 107,524, 2013 WL 2321167 (Kan. App. 2013) (unpublished opinion).

In May 2014, we held that all out-of-state pre-1993 convictions must be classified as nonperson offenses. *State v. Murdock*, 299 Kan. 312, Syl. ¶ 5, 323 P.3d 846 (2014) (*Murdock I*), *overruled by State v. Keel*, 302 Kan. 560, Syl. ¶ 8, 357 P.3d 251 (2015). Relying on that decision, Johnson filed a pro se motion to correct an illegal sentence arguing his sentence was illegal because, according to *Murdock I*, his 1992 Illinois conviction should have been classified as a nonperson felony as it occurred before 1993. The district court denied his motion reasoning the statutory amendments made by 2015 House Bill No. 2053 in response to *Murdock I* operated retroactively. L. 2015, ch. 5, § 1.

Johnson timely appealed, but due to circumstances outside of Johnson's control, the appeal was not docketed until 2021. A panel of the Court of Appeals affirmed the district court and we granted review. See *State v. Johnson*, No. 123,825, 2021 WL 6069024 (Kan. App. 2021) (unpublished opinion).

DISCUSSION

All parties agree that whether a sentence is illegal under K.S.A. 22-3504 is controlled by the law as it existed at the time of sentencing. As we made clear in *Murdock II*, the "legality of a sentence is fixed at a discrete moment in time—the moment the sentence was pronounced. At that moment, a pronounced sentence is either legal or illegal according to then-existing law." *State v. Murdock*, 309 Kan. 585, 591, 439 P.3d

307 (2019) (*Murdock II*). Because of this, a change in the law after sentencing can never render a sentence illegal. 309 Kan. at 591. We exercise plenary review over the questions of law at the heart of illegal sentence challenges. *State v. Parks*, 312 Kan. 487, 489, 476 P.3d 794 (2020); *State v. Coleman*, 311 Kan. 305, 308, 460 P.3d 368 (2020).

We note at the outset that while the language in K.S.A. 22-3504 has gone through a few legislative revisions since Johnson initially filed his motion, those revisions are not applicable to Johnson's motion. *Hayes v. State*, 307 Kan. 9, 14, 404 P.3d 676 (2017) ("[A] statute operates prospectively unless its language clearly indicates a legislative intent to operate retroactively."); *State v. Roat*, 311 Kan. 581, 602, 466 P.3d 439 (2020) ("Even if the [2019] amendment applies retroactively, it applies only to situations in which the defendant has not yet filed a motion before the operative date of the amendment.").

Thus, this case boils down to the following question—in 2011, what was the then-existing law in Kansas concerning how pre-1993 out-of-state convictions must be scored for purposes of criminal history? Johnson argues that the law in 2011 was that such convictions must be scored as nonperson felonies. To arrive at this conclusion, he relies on our 2010 decision in *State v. Williams*, 291 Kan. 554, 244 P.3d 667 (2010), *overruled by State v. Keel*, 302 Kan. 560, 357 P.3d 251 (2015).

In *Williams*, we held that "comparable offenses in Kansas shall be determined as of the date the defendant committed the out-of-state crimes." 291 Kan. 554, Syl. ¶ 4. *Williams* did not expressly hold that pre-1993 out-of-state convictions had to be scored as nonperson felonies. That issue was simply not raised or addressed by the controversy in *Williams*. It was not until four years later, in *Murdock I*, that we relied on the precedent set in *Williams* to hold that "[w]hen calculating a defendant's criminal history that includes out-of-state convictions committed prior to enactment of the Kansas Sentencing Guidelines Act, K.S.A. 21-4701 *et seq.*, the out-of-state convictions must be classified as

nonperson offenses." *Murdock I*, 299 Kan. 312, Syl. ¶ 5. As such, Johnson's reliance on *Williams* is misplaced.

Johnson argues that because *Murdock I* relied on our holding in *Williams*, *Williams* must be interpreted to include the ultimate holding of *Murdock I*. We note that his argument is not without logical appeal, suggesting as it does that the law emerges whole out of legal maxims and doctrines, rather than piece-meal out of concrete cases and disputes. The dissent essentially takes this view as well. In this view, the law pre-exists judicial decisions and a court such as the *Murdock I* court can be said to merely have discovered and articulated a rule that was always present. Without rejecting this view in its entirety, we find the question of discerning the controlling law in a period of uncertainty to be decidedly murkier than the dissent suggests.

First, as already noted, it is clear that *Williams* was not directly on-point. *Williams* dealt with the comparison of out-of-state convictions for a post-1993 offense. *Williams*, 291 Kan. at 555 (prior convictions were 2001 and 2002 identity theft crimes in the state of Washington). *Williams* did not directly address the issue of whether pre-1993 offenses could be classified as person or nonperson offenses. That specific rule did not arrive until 2014 when the *Murdock I* court declared it.

Therefore, prior to 2014, *Williams* left a gap—if not in logic, then at least in terms of a binding holding from the Kansas Supreme Court. And prior to *Murdock I*, the Kansas Court of Appeals consistently filled that gap with their own rule, expressed through a series of unpublished opinions. Two September 2011 cases show that the Court of Appeals had refused to extend *Williams* to pre-1993 out-of-state convictions. See *State v. Murdock*, No. 104,533, 2011 WL 4031550, at *2 (Kan. App. 2011) (unpublished opinion) (Filed on September 9, 2011, the court rejected defendant's arguments that *Williams* mandated that pre-1993 offenses be scored as nonperson felonies.); *State v. Mims*, No. 103,044, 2011 WL 4563068, at *5 (Kan. App. 2011) (unpublished opinion)

(Filed on September 30, 2011, the court, though not directly considering the application of *Williams*, again held that its precedent required making a distinction between person and nonperson felonies occurring before 1993.).

Therefore, in November 2011, prior to Johnson's sentencing, the Court of Appeals had two recent unpublished opinions that considered the application of the principles of *Williams* and determined it did not apply to pre-1993 offenses.

This is because the then-existing rule for pre-1993 offenses codified in K.S.A. 2005 Supp. 21-4711(e) (later changed to K.S.A. 21-6811[e] after the recodification of our criminal code effective July 1, 2011) stated in part: "The state of Kansas shall classify the crime as person or nonperson. *In designating a crime as person or nonperson comparable offenses shall be referred to.* If the state of Kansas does not have a comparable offense, the out-of-state conviction shall be classified as a nonperson crime." (Emphasis added.) In applying this statutory directive, courts used the "closest approximation" test as articulated in *State v. Vandervort*, 276 Kan. 164, 179, 72 P.3d 925 (2003) (to be scored as a person or nonperson offense, the out-of-state conviction "need only be comparable, not identical").

It is true that *Murdock I* would eventually declare those opinions to be in error. Yet before that, these decisions were the most authoritative declaration of the specific law governing how to score pre-1993 out-of-state convictions. It is true that unpublished opinions by the Court of Appeals are not binding precedent on the district courts. This procedural fact does not dissuade us from giving significant weight to these decisions with respect to how a district court, at the time of Johnson's sentencing, was to understand the state of the law.

We reiterate that the holding of *Murdock I* was distinctly new in Kansas law. And it was a *change* in the law vis-à-vis how the Kansas Court of Appeals sought to reconcile

Williams and *Vandervort*. Indeed, subsequent developments in this court and in our Legislature have been kinder to *Vandervort* than to *Williams* and *Murdock I*. See *Keel*, 302 Kan. at 590 ("[T]he classification of a prior conviction or juvenile adjudication as a person or nonperson offense for criminal history purposes under the KSGA is determined based on the classification in effect for the comparable Kansas offense at the time the current crime of conviction was committed."); *Murdock II*, 309 Kan. at 593 ("We reject the State's argument that *Murdock* [*I*] was simply an aberration or 'oops' in the law. Instead, *Murdock* [*I*] was controlling law [albeit for a short window of time] and in effect when Murdock's second sentence was pronounced. Second, *Keel* changed the law because it explicitly overruled *Murdock* [*I*'s] holding that prior out-of-state crimes must be scored as nonperson offenses. . . . [W]e acknowledge that *Keel* controls for defendants sentenced after *Keel* was decided. [Citation omitted.]"); *State v. Campbell*, 307 Kan. 130, 134, 407 P.3d 240 (2017) (applying *Keel*, rather than *Murdock I* to a case which was pending as of the date of *Keel*'s publication); *State v. Terrell*, 315 Kan. 68, 75, 504 P.3d 405 (2022) (applying the rationale of *Keel* to post-guidelines crimes when post-guideline classifications have changed over time).

We need not fall down the rabbit hole of wondering whether those yet-later-still developments in the law demonstrate that the Court of Appeals was correct all along in *Murdock I*. Instead, we take a decidedly more practical approach—one that recognizes the law as a forward-facing institution that develops through concrete controversies over time, resolved by courts of differing authority. Therefore, to evaluate the legality of Johnson's sentence on November 11, 2011, we are limited to the legal framework available to the district court on that date. We will not read later pronouncements backwards in time to divine their reflection in earlier caselaw.

Having settled the question of the applicable law in November 2011, we must review the district court's application of that law to Johnson's case. At the time of his sentencing, the district court was required to decide whether his pre-1993 out-of-state

conviction was comparable to a Kansas crime. To determine comparability, the district court was required to follow the "closest approximation" test articulated in *Vandervort* and still required by the Kansas Court of Appeals at the time of Johnson's sentencing. *Vandervort*, 276 Kan. at 179.

The out-of-state statutes under which Johnson was convicted, Ill. Rev. Stat. ch. 38 para. 18-1 (1991 Supp.) and Ill. Rev. Stat. ch. 38 para. 18-2 (1991 Supp.), define armed robbery as:

> "Sec. 18-1. Robbery. (a) A person commits robbery when he takes property from the person or presence of another by the use of force or by threatening the imminent use of force. "
>
> "Sec. 18-2. Armed Robbery. (a) A person commits armed robbery when he or she violates Section 18-1 while he or she carries on or about his or her person, or is otherwise armed with a dangerous weapon.
> "(b) Sentence.
> Armed Robbery is a Class X felony."

The closest comparable version of the applicable Kansas statutes in effect in 2005 defining aggravated robbery were K.S.A. 21-3426 and K.S.A. 21-3427:

> "Robbery is the taking of property from the person or presence of another by force or by threat of bodily harm to any person." K.S.A. 21-3426 (Furse 1995).
>
> "Aggravated robbery is a robbery, as defined in K.S.A 21-3426 and amendments thereto, committed by a person who is armed with a dangerous weapon or who inflicts bodily harm upon any person in the course of such robbery.
>
> "Aggravated robbery is a severity level 3, person felony." K.S.A. 21-3427 (Furse 1995).

Effective July 1, 2011, the comparable version of the applicable Kansas statute defining aggravated robbery was K.S.A. 2011 Supp. 21-5420:

> "(a) Robbery is knowingly taking property from the person or presence of another by force or by threat of bodily harm to any person.
>
> "(b) Aggravated robbery is robbery, as defined in subsection (a), when committed by a person who:
>
> (1) Is armed with a dangerous weapon; or
>
> (2) inflicts bodily harm upon any person in the course of such robbery.
>
> "(c) (1) Robbery is a severity level 5, person felony.
>
> (2) Aggravated robbery is a severity level 3, person felony."

Under *Vandervort*, the language in the Illinois statute is comparable to both the 2005 and 2011 versions of the Kansas statute for aggravated robbery, which under either version is classified as a person felony. Thus, under the law as it existed in 2011, the district court properly scored Johnson's 1992 Illinois conviction as a person felony. Therefore, Johnson's criminal history score was correctly calculated as C and his sentence "conformed to the applicable statutory provision," in "term of authorized punishment." *State v. Gilbert*, 299 Kan. 797, 800-01, 326 P.3d 1060 (2014). Consequently, Johnson's sentence is not illegal under K.S.A. 22-3504, and the judgment of the lower courts is affirmed.

Affirmed.

* * *

BILES, J., dissenting: I would hold the controlling law for sentencing purposes in 2011 was *State v. Williams*, 291 Kan. 554, 244 P.3d 667 (2010), *overruled by State v. Keel*, 302 Kan. 560, Syl. ¶ 9, 357 P.3d 251 (2015). *Williams* expressly held "the comparable offenses in Kansas *shall be determined as of the date the defendant committed the out-of-state crimes*." (Emphasis added.) 291 Kan. 554, Syl. ¶ 4. And its decision flowed seamlessly from the applicable statute that also did not differentiate pre-1993 out-of-state prior convictions from post-1993 out-of-state prior convictions. See K.S.A. 21-6811(e). We repeated that point four years later when we held *Williams* compelled the outcome in *State v. Murdock*, 299 Kan. 312, 323 P.3d 846 (2014) (*Murdock I*), *overruled by Keel*, 302 Kan. 560, Syl. ¶ 9. The upshot is that Byron Johnson's 2011 sentence is illegal because the district court did not score his 1992 Illinois armed robbery conviction by using the date when he committed the out-of-state offense. For that reason, I dissent.

To be fair, this area of criminal sentencing law has been a source of consternation for most all involved. The majority acknowledges as much. Slip op. at 4. But for the criminal defendant, this has proven to be a life-altering game of musical chairs hoping not to be left out when the caselaw settled down and the music stopped. The higher stakes, of course, are longer prison sentences.

The majority asserts *Williams* was not a change in the law at least for pre-1993 offenses because *Williams* dealt specifically with a post-1993 out-of-state conviction. Slip op. at 4. And because of that, the majority reasons this presented an unaddressed gap for pre-1993 offenses that was filled by unpublished Court of Appeals decisions. But, as mentioned, that presupposes the applicable statute in Johnson's case, K.S.A. 2011 Supp. 21-6811(e), distinguished between pre-1993 and post-1993 prior out-of-state convictions when it set out how to calculate his criminal history score, which it didn't.

In relevant part K.S.A. 2011 Supp. 21-6811(e) straightforwardly provides: "The state of Kansas shall classify the crime as person or nonperson. In designating a crime as person or nonperson comparable offenses shall be referred to." Nowhere in the statute—or for that matter anywhere else in the Revised Kansas Sentencing Guidelines Act, K.S.A. 2011 Supp. 21-6801 et seq.—did the statutory scheme make a pre- and post-1993 distinction for prior out-of-state convictions when classifying person or nonperson felonies. So the only hole I see is with the majority's reasoning.

When statutory language does not treat characteristics such as these differently, we are not free to take out our pencils and write something in the law's margins we think is better. See *State v. Bodine*, 313 Kan. 378, 399, 486 P.3d 551 (2021) ("[Courts] should refrain from reading something into the statute that is not readily found in its words."). *State v. Crosby*, 312 Kan. 630, 636, 479 P.3d 167 (2021) ("The best and safest rule for discerning this intent is the plain language of the statute."). This caution is especially important when a stated legislative purpose for our state's sentencing guidelines is to apply them "equally to all offenders." K.S.A. 2022 Supp. 21-6802(a).

In its syllabus paragraphs, the *Williams* court stated:

> "3. The appellate rule that the penalty parameters for an offense are fixed as of the date of the commission of the offense is fair, logical, and easy to apply. Neither the State nor a defendant may maneuver a sentencing date to take advantage of or avoid a change in a statute.
>
> "4. When calculating a defendant's criminal history that includes out-of-state convictions and juvenile adjudications under K.S.A. 21-4711, the State shall classify the out-of-state crime as a person or nonperson. In designating these crimes as person or nonperson, the comparable offenses in Kansas shall be determined as of the date the defendant committed the out-of-state crimes." *Williams*, 291 Kan. 554, Syl. ¶¶ 3-4.

Paragraph 3 provides the rationale for Paragraph 4. Together, they state the applicable law going forward. See *State v. Valdez*, 316 Kan. 1, 9, 512 P.3d 1125 (2022) (noting syllabus paragraphs are "'the points of law'" that the court has determined; relying on K.S.A. 20-203). And the *Williams* court understood what it was doing because it noted: "using the date of commission of the prior out-of-state crime to calculate the criminal history would be consistent with our fundamental rule of sentencing for a current in-state crime: sentencing in accordance with the penalty provisions in effect at the time the crime was committed." *Williams*, 291 Kan. at 560.

Without differentiating pre- and post-1993 prior convictions, the *Williams* court considered—but rejected—the argument that *State v. Vandervort*, 276 Kan. 164, 72 P.3d 925 (2003) (comparing defendant's prior out-of-state conviction with the comparable Kansas offense in effect at the time of the current crimes of conviction), *overruled in part on other grounds by State v. Dickey*, 301 Kan. 1018, 350 P.3d 1054 (2015), should apply in classifying the defendant's prior out-of-state convictions as person or nonperson felonies. The *Keel* court saw this for what it was, when it observed, *Williams* "depart[ed] from *Vandervort*." *Keel*, 302 Kan. at 582.

We know now from subsequent caselaw that *Williams* "was a mistake," but that does not make *Williams* "an aberration or 'oops' in the law." *Keel*, 302 Kan. at 582, 585 ("*Williams* . . . did not fully acknowledge *Vandervort*'s application of this rule. Consequently, *Williams* failed to apply the rule to the classification issue before it."); *State v. Murdock*, 309 Kan. 585, 593, 439 P.3d 307 (2019) (*Murdock II*). Even so, *Williams* was still the controlling law in 2011 when Johnson's sentence was pronounced and remained so until 2015 when *Keel* overruled it. See *Murdock II*, 309 Kan. at 593. *Williams* did in fact depart from *Vandervort*. And since K.S.A. 21-6811(e) does not instruct courts to treat pre- and post-1993 prior convictions differently, our courts lacked the authority to do so. That's the point *Williams* made. *Williams*, 291 Kan. 554, Syl. ¶ 4.

I also disagree with the majority's characterization of *Murdock I* when it concludes "the holding of *Murdock I* was distinctly new in Kansas law. And it was a *change* in the law vis-à-vis how the Kansas Court of Appeals sought to reconcile *Williams* and *Vandervort*." Slip op. at 6. It makes this claim even though it acknowledges *Murdock I* "*relied* on the precedent set in *Williams*." (Emphasis added.) Slip op. at 3; see also *Murdock II*, 309 Kan. at 586 (noting *Murdock I* "[f]ollow[ed]" *Williams*). To be clear, without *Williams*, *Murdock I* would not have ended where it did.

Finally, I believe the majority finds illusory comfort in its notion that there was a void—a lack of law dealing with the comparison of out-of-state convictions for pre-1993 offenses—filled by unpublished Court of Appeals decisions such as *State v. Murdock*, No. 104,533, 2011 WL 4031550, at *2 (Kan. App. 2011) (unpublished opinion), and *State v. Mims*, No. 103,044, 2011 WL 4563068, at *5 (Kan. App. 2011) (unpublished opinion). Slip op. at 4. *Murdock I* debunks that by explaining the flaws and inconsistencies that resulted from the Court of Appeals not following *Williams*. Although long, we meticulously explained:

> "The *Murdock* panel held that pre-1993 offenses should be designated based on the current guidelines offenses, reasoning: 'Kansas courts have routinely classified pre-1993 offenses as either person or nonperson for criminal history purposes *by comparing the offenses to current guidelines offenses*.' (Emphasis added.) *Murdock*, 2011 WL 4031550, at *2; see *State v. Mitchell*, No. 104,833, 2012 WL 1649831, at *7 (Kan. App. 2012) (unpublished opinion), *petition for rev.* filed June 4, 2012; *State v. Mims*, No. 103,044, 2011 WL 4563068, at *5 (Kan. App. 2011) (unpublished opinion).
>
> "Notably, this reference to 'current guidelines offenses' is ambiguous. For example, how is the panel's rule applied in cases like *Williams* when the legislature modified the classification after the KSGA was adopted? Seemingly, the rule would conflict with this court's controlling law as stated in *Williams*. In addition, the view followed by the Court of Appeals in these cases is troubling because it originated in a

series of Court of Appeals cases that predate this court's *Williams* decision. See, *e.g.*, *State v. Henderson*, No. 100,371, 2009 WL 2948657, at *3 (Kan. App. 2009) (unpublished opinion), *rev. denied* 290 Kan. 1099 (2010); *State v. Boster*, No. 101,009, 2009 WL 3738490, at *4 (Kan. App. 2009) (unpublished opinion), *rev. denied* 290 Kan. 1096 (2010). The *Murdock* panel did not address *Williams* in its analysis despite citing it as holding 'comparable Kansas offenses are determined by the date the defendant committed the prior out-of-state offenses' while summarizing Murdock's claims. *Murdock*, 2011 WL 4031550, at *1 (citing *Williams*, 291 Kan. at 560-62).

"The panel did cite *Farris v. McKune*, 259 Kan. 181, 185-86, 911 P.2d 177 (1996), as sufficiently analogous to support its holding. *Murdock*, 2011 WL 4031550, at *2. But *Farris* is not applicable because it addresses the Department of Corrections' conversion of three offenders' preguidelines sentences to the sentencing guidelines, which was controlled by K.S.A. 21-4724(c)(1). The *Farris* court held that "'[i]n converting a sentence, the legislature intended that the Department of Corrections use records available to it to determine what the defendant did when the crime was committed and convert that crime to an analogous crime existing after July 1, 1993.'" 259 Kan. at 195 (quoting *State v. Fierro*, 257 Kan. 639, 650, 895 P.2d 186 [1995]). The KSGA lacks a similar provision for persons who were not imprisoned at the time the KSGA was enacted.

"In the absence of a statutory directive, we are left with our decision in *Williams* that the comparable Kansas offense should be determined as of the date the out-of-state offenses were committed. Even though the State seeks a different rule in this appeal, we must emphasize we adopted the current rule at the State's urging in *Williams*. See 291 Kan. at 559 (State argued this court should score the Washington offenses according to their Kansas equivalents when the Washington offenses were committed)." *Murdock I*, 299 Kan. at 317-18.

In other words, these unpublished Court of Appeals decisions did not fill a gapping void in the law—they were just wrong. They failed to follow K.S.A. 2011 Supp. 21-6811(e) ("The state of Kansas shall classify the crime as person or nonperson. In designating a crime as person or nonperson comparable offenses shall be referred to.") as

Williams instructed. They also are not binding precedent. See Supreme Court Rule 7.04(g)(2)(A) (2022 Kan. S. Ct. R. at 48) ("An unpublished memorandum opinion . . . is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.").

To circle back to where I started, *Murdock I* did not depart from the then-existing law. Rather, *Murdock I* followed *Williams* and applied its governing principles about how to classify prior out-of-state convictions. See *Murdock II*, 309 Kan. at 592 (distinguishing true changes in the law from developments in the law). And as we held in *Murdock I*,

> "Our analysis in *Williams* is indistinguishable from the analysis applicable to the circumstances presented here, and the same policy considerations continue to apply. Using the date the prior out-of-state crime was committed to calculate a defendant's criminal history score is 'consistent with our fundamental rule of sentencing for a current in-state crime: sentencing in accordance with the penalty provisions in effect at the time the crime was committed.' [*Williams*], 291 Kan. at 560. Moreover, fixing the penalty parameters as of the date the crime was committed is fair, logical, and easy to apply. 291 Kan. at 560. Applying that rule, robbery as defined in K.S.A. 21-3426 (Ensley 1981) is the comparable Kansas offense. The penalty provision of that pre-1993 statute classifies robbery as a class C felony, and it does not designate the offense as person or nonperson." 299 Kan. at 318.

For these reasons, I would hold Johnson's 2011 sentence to be illegal because the district court did not score his 1992 Illinois armed robbery conviction as *Williams* dictated relying on the applicable statute—using the date when Johnson committed the out-of-state offense. Accordingly, I dissent.

WILSON and STANDRIDGE, JJ., join the foregoing dissenting opinion.