

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 124,636

STATE OF KANSAS,  
*Appellee,*

v.

BRIAN C. BAILEY,  
*Appellant.*

SYLLABUS BY THE COURT

Under K.S.A. 60-2101(b) and K.S.A. 2022 Supp. 22-3601, the Kansas Supreme Court has jurisdiction over appeals from district court judgments upholding or reversing the validity of restitution orders imposed in first-degree murder convictions.

Appeal from Johnson District Court; DANIEL VOKINS, magistrate judge. Submitted without oral argument March 31, 2023. Opinion filed June 30, 2023. Affirmed.

*Richard P. Klein*, of Lenexa, was on the brief for appellant.

*Stephanie B. Poyer*, of Butler & Associates P.A., of Topeka, was on the brief for appellee.

The opinion of the court was delivered by

ROSEN, J.: Brian C. Bailey challenges the continuing validity of the restitution imposed on him in connection with convictions for felony murder and aggravated robbery.

Bailey was convicted in 1988 of one count of first-degree felony murder and four counts of aggravated robbery for events that took place in December 1986. His

convictions were affirmed in *State v. Bailey*, 247 Kan. 330, 799 P.2d 977 (1990), *cert. denied* 500 U.S. 920 (1991). Following the vacating of his sentence and a remand for resentencing in *State v. Bailey*, 251 Kan. 527, 531, 834 P.2d 1353 (1992), the district court reimposed a life sentence for the felony murder and ordered that he serve three of his four aggravated robbery convictions concurrently. In addition, the court ordered restitution of \$37,521.07.

Bailey has engaged in many years of litigation and appeals relating to various aspects of conviction and sentence. In 2017, this court once again considered an appeal from challenges Bailey raised to his sentence and to the restitution order. *State v. Bailey*, 306 Kan. 393, 394 P.3d 831 (2017). In that case, Bailey argued his restitution order was dormant under K.S.A. 60-2403 and 60-2404 and thus void because no civil actions had been filed to keep the claim alive. The court concluded that, under the law in effect at the time he was sentenced, the district court lacked the authority to impose both incarceration and simultaneous restitution. 306 Kan. at 397. The sentencing court could only specify the amount Bailey should pay if restitution were later ordered as a condition of conditional release. 306 Kan. at 397; see K.S.A. 1986 Supp. 21-4603(2)(f). Accordingly, no enforceable restitution judgment existed against Bailey during the term of his incarceration, and, as a result, he could not rely on dormancy statutes to void the restitution order. 306 Kan. at 397.

This court went on to conclude that the State had been wrongly collecting restitution from Bailey's prison account since 2012 based on a clerical error entered into the county district court computer system. The court remanded the case for a hearing to find and correct any clerical error affecting collection of restitution from Bailey. *Bailey*, 306 Kan. at 398.

On remand, the district court indeed found a clerical error and ordered it be corrected. The court determined that the Clerk of the District Court made a mistake

during conversion of district court records from paper to digital records. Under K.S.A. 1986 Supp. 21-4603(2)(f), the court was precluded from collecting restitution from Bailey while he was imprisoned. The court ordered that no further collection of restitution take place while Bailey remained in prison.

Bailey also requested that he be refunded \$3,347.16 already improperly collected from his account. The district court established that the actual amount of \$2,349.93 was collected and distributed to victims in the case and \$535.89 remained in an open-payables account under the clerk's control. Looking to *United States v. Hayes*, 385 F.3d 1226 (9th Cir. 2004), the court reasoned that funds already distributed to victims could not be recouped because they were no longer under the control of the government, and only the \$535.89 could be ordered returned to Bailey. In addition, the court noted that the return of some of the funds was barred by the K.S.A. 60-513(a) statute of limitations.

Bailey appealed from that decision. In that appeal, this court observed that K.S.A. 2020 Supp. 22-3504(b), relating to correction of sentences, did not authorize a court to do anything more than correct the clerical order; there was no statutory authority for refunding improperly collected funds. *State v. Bailey*, 313 Kan. 895, 897, 491 P.3d 1256 (2021). The court then noted that Bailey had failed to brief adequately an argument that he had some statutory or constitutional basis for demanding a refund of funds already distributed. 313 Kan. at 897-900. The court refused to consider his claim on appeal and affirmed the district court.

While that appeal was pending, on April 30, 2021, Bailey filed a "Motion to Void Restitution, Reimbursements for Indigent Defense Services and Court Cost and Fees and Witness Fees." Bailey repeated his argument that the restitution order was dormant and therefore void because no civil actions had been filed to keep the claim alive. The district court relied on *Bailey*, 306 Kan. at 393, to deny the motion. In doing so, the court cited to

the law-of-the-case doctrine and declined to reopen the matter already decided by this court.

Bailey took a timely appeal to this court.

As a threshold question, we directed the parties to include in their briefing a discussion of certain jurisdictional matters. In particular, we asked the parties to address whether this court is the appropriate venue for this appeal. We conclude that it is.

Instead of appealing to the Court of Appeals, Bailey took his appeal directly to the Kansas Supreme Court under K.S.A. 60-2101(b), which states that this court has jurisdiction over appeals governed by K.S.A. 2022 Supp. 22-3601. The plain language of K.S.A. 2022 Supp. 22-3601(b) states that "[a]ny appeal permitted to be taken from a district court's final judgment in a criminal case shall be taken to the supreme court" in cases of life sentences and certain off-grid convictions.

This court has held that "[r]estitution is part of a criminal defendant's sentence." *State v. Northern.*, 304 Kan. 860, 862, 375 P.3d 363 (2016); see also *State v. Hall*, 298 Kan. 978, 983, 319 P.3d 506 (2014) ("Restitution constitutes part of a criminal defendant's sentence."); *State v. McDaniel*, 292 Kan. 443, 446, 254 P.3d 534 (2011) (same). This is not an action challenging a garnishment or a civil order. A criminal restitution order itself is not a legal obligation equivalent to a civil judgment. See *State v. Arnett*, 314 Kan. 183, 194, 496 P.3d 928 (2021), *cert. denied* 142 S. Ct. 2868 (2022).

Because restitution is part of Bailey's sentence, challenges to the ongoing validity of that part of the sentence properly lie with this court. See, e.g., *State v. Gilbert*, 299 Kan. 797, 800, 326 P.3d 1060 (2014) (jurisdiction over appeal of motion to correct illegal sentence lies with court having jurisdiction to hear original appeal under K.S.A. 2013 Supp. 22-3601[b][3]).

This conclusion is consistent with other cases in which this court has assumed jurisdiction over matters directly relating to the conviction and sentence in first-degree murder convictions, even when the appellants have invoked the civil code as authority for their actions. See, e.g., *State v. Kingsley*, 299 Kan. 896, 326 P.3d 1083 (2014) (Supreme Court considered direct appeal from denial of motion under K.S.A. 60-260[b] for relief from judgment); *State v. Mitchell*, 297 Kan. 118, 298 P.3d 349 (2013) (same); *State v. Robinson*, 309 Kan. 159, 432 P.3d 75 (2019) (court assumed jurisdiction to decide whether civil code authorizes postconviction discovery in a criminal case); *Bailey*, 313 Kan. at 895.

This court therefore has jurisdiction over Bailey's appeal. He is subject to life sentences, and his off-grid convictions lie within the statutory scope for direct appeals to this court. This is "any appeal"; it is from "a district court's final judgment"; and it is the result of pleadings filed under Bailey's criminal case number. It meets the statutory conditions for an appeal to this court under K.S.A. 2022 Supp. 22-3601(b).

Bailey argues the dormancy statutes render his restitution judgment void because no renewal affidavit and no motion to revive judgment have been filed. In *Bailey*, 306 Kan. at 397, this court explicitly held that "no enforceable restitution judgment exists against Bailey, and the dormancy statutes do not apply." See also *Arnett*, 314 Kan. at 194 ("unlike most other civil judgments, a modern judgment for restitution never becomes dormant"); *State v. Alderson*, 299 Kan 148, 151, 322 P.3d 364 (2014) (restitution is not enforceable judgment at time of sentencing; judgment cannot become dormant).

The district court relied on the law-of-the-case doctrine when it denied Bailey's claim. The law-of-the-case doctrine prevents a party from relitigating an issue already decided on appeal in successive stages of the same proceeding. *State v. Parry*, 305 Kan. 1189, Syl. ¶ 1, 390 P.3d 879 (2017). Courts adhere to the law of the case ""to avoid indefinite relitigation of the same issue, to obtain consistent results in the same litigation,

to afford one opportunity for argument and decision of the matter at issue, and to assure the obedience of lower courts to the decisions of appellate courts. [Citations omitted.]"" 305 Kan. at 1194-95.

One circumstance under which the law-of-the-case doctrine comes into play is when a second appeal is brought in the same case. In that instance, the first decision is generally the settled law of the case on all questions involved in the first appeal, and "reconsideration will not normally be given to those questions." *Parry*, 305 Kan. at 1195. An argument once made to and resolved by an appellate court becomes "the law" in that case and generally cannot be challenged in a second appeal. *State v. Collier*, 263 Kan. 629, Syl. ¶ 3, 952 P.2d 1326 (1998).

Bailey offers no new arguments or authority demonstrating that the State is required to renew its restitution judgments for such judgments to become enforceable upon release from incarceration. *Bailey*, 313 Kan. at 895, and *Bailey*, 306 Kan. at 393, are the law of this case, and the judgment of the district court ruling against Bailey based on the law-of-the-case doctrine is accordingly affirmed.

STANDRIDGE, J., not participating.