

NOT DESIGNATED FOR PUBLICATION

Nos. 125,049
125,050

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

DAVID ALLEN WADE,
Appellant.

MEMORANDUM OPINION

Appeal from Thomas District Court; KEVIN BERENS, judge. Opinion filed May 19, 2023.
Affirmed in part and vacated in part.

Jennifer C. Roth, of Kansas Appellate Defender Office, for appellant.

Natalie Chalmers, assistant solicitor general, and *Kris W. Kobach*, attorney general, for appellee.

Before BRUNS, P.J., CLINE and HURST, JJ.

PER CURIAM: David Allen Wade pleaded guilty to criminal charges in two separate cases under a global plea agreement, in exchange for the dismissal of other charges and a third criminal case. The parties agree a portion of Wade's sentence in case No. 21CR99 should be vacated due to an error by the district court which renders that portion illegal. But Wade also appeals the district court's denial of incarceration credit. Because Wade was incarcerated on other charges during the time for which he wants credit, we find the district court did not err. We therefore affirm the district court's decision to deny Wade incarceration credit and vacate the portion of his sentence in

21CR99 which required that sentence to be served consecutively to two other cases—No. 19CR86 and No. 20CR52.

Wade was facing criminal charges in three cases in February 2022. As part of a global plea agreement, he pleaded guilty in case 21CR99 to possession of methamphetamine and guilty in case No. 21CR223 to the same charge. The State agreed to dismiss additional charges for burglary and criminal threat in case 21CR99 and traffic in contraband in a correctional institution in case 21CR223. It also agreed to dismiss a third case—Thomas County case No. 21CR107. The State agreed to recommend Wade's sentences in 21CR99 and 21CR223 be run concurrent, and Wade agreed to serve a sentence of 10 to 42 months' imprisonment and pay a fine.

At sentencing, the district court imposed the standard sentence of 20 months' imprisonment with a 12-month postrelease supervision term for Wade's convictions. It applied special sentencing rules K.S.A. 2022 Supp. 21-6606(c) (Special Rule 9) and K.S.A. 2022 Supp. 21-6606(d) (Special Rule 10) to both cases and thus ordered Wade's sentences in 21CR99 and 21CR223 to run consecutive to his sentences in two other cases, 19CR86 and 20CR52. The court ran Wade's sentence in 21CR223 concurrent with his sentence in 21CR99, as recommended by the parties.

We vacate the illegal portion of Wade's sentence in 21CR99.

The parties agree neither Special Rule 9 nor Special Rule 10 apply to Wade's sentence in 21CR99. The State concedes the district court erred when it ordered Wade's sentence in that case to run consecutive to his sentences in 19CR86 and 20CR52 based on its application of these rules. This mistake rendered that portion of Wade's sentence illegal, and a court may correct an illegal sentence at any time while the defendant is serving the sentence. K.S.A. 2022 Supp. 22-3504(a). We therefore vacate the portion of

Wade's sentence in 21CR99 which required it to run consecutive to his sentences in 19CR86 and 20CR52.

That said, since Wade does not challenge the application of these rules to his sentence in 21CR223 or the district court's requirement that his sentence in 21CR223 run consecutive to his sentences in 19CR86 and 20CR52 based on its application of these rules, the court's error in 21CR99 has no real effect on Wade's total sentence. This means remand is unnecessary and this opinion vacating the illegal portion of Wade's sentence in 21CR99 is sufficient. See *State v. Boswell*, 314 Kan. 408, 418, 499 P.3d 1122 (2021) (finding no remand necessary to vacate the order of lifetime postrelease supervision because the mandate and opinion would determine the action).

We affirm the denial of incarceration credit.

Wade also argues he is entitled to incarceration credit from November 24, 2021, to February 9, 2022. The State disagrees because he was also incarcerated for 21CR107 during that time—a case dismissed as part of the global plea agreement.

The right to incarceration credit is statutory. See K.S.A. 2022 Supp. 21-6615(a). Interpretation of a statute is a question of law over which appellate courts exercise unlimited review. *State v. Collins*, 303 Kan. 472, 473-74, 362 P.3d 1098 (2015).

Under K.S.A. 2022 Supp. 21-6615(a), incarceration credit is mandatory if appropriate, and the district court has no discretion to deny it. See *State v. Babcock*, 226 Kan. 356, 363, 597 P.2d 1117 (1979). K.S.A. 2022 Supp. 21-6615(a) states that incarceration credit is appropriate for "the time which the defendant has spent incarcerated pending the disposition of the defendant's case." The district court denied credit for the time Wade was incarcerated before sentencing because it found he was

incarcerated for other matters (21CR107, which was dismissed) and not solely for the cases he was being sentenced in (21CR99 and 21CR223).

In *Campbell v. State*, 223 Kan. 528, 530-31, 575 P.2d 524 (1978), the Kansas Supreme Court held that a criminal defendant is entitled to credit "for each day spent in jail solely on account of the pending charge, for which the prisoner is later sentenced." Moreover, "[a] defendant is not entitled to credit on a sentence for time which he has spent in jail upon other, distinct, and wholly unrelated charges." 223 Kan. 528, Syl. ¶ 2.

Wade does not dispute that he was also incarcerated for the dismissed case, 21CR107, during the time for which he is seeking jail credit. He also does not dispute that *Campbell* controls and defeats his claim. Instead, he argues *Campbell* was wrongly decided and he asks us to carve out an exception to its holding.

The longstanding rule in Kansas is that "a person is only entitled to receive jail-time credit for the time spent incarcerated solely for the charges associated with the defendant's sentence." *State v. Whiteeagle*, No. 122,617, 2021 WL 3042412, at *3 (Kan. App. 2021) (unpublished opinion) (citing *State v. Smith*, 309 Kan. 977, 441 P.3d 1041 [2019]), *rev. denied* 314 Kan. 859 (2022). Since Wade was not in jail only because of the cases on which he was sentenced, he is not entitled to the jail credit. See *Smith*, 309 Kan. at 981. We are bound by controlling precedent from our Supreme Court which addresses the exact issue before us. As such, the district court did not err in denying Wade the credit he seeks.

Affirmed in part and vacated in part.