

NOT DESIGNATED FOR PUBLICATION

No. 125,837

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

COREY L. BREESE,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; CHRISTOPHER M. MAGANA, judge. Submitted without oral argument. Opinion filed December 8, 2023. Remanded with directions.

Jacob Nowak, of Kansas Appellate Defender Office, for appellant.

Julie A. Koon, assistant district attorney, *Marc Bennett*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before ARNOLD-BURGER, C.J., ATCHESON, J., and TIMOTHY G. LAHEY, S.J.

PER CURIAM: On appeal, Defendant Corey L. Breese contends the Sedgwick County District Court erred in conditionally limiting the 523 days of jail time credit it granted him in this case for the period he spent in custody leading up to his sentencing. Based on that limitation, the Kansas Department of Corrections apparently has declined to adjust Breese's sentence to account for the jail time. In light of the Kansas Supreme Court's recent decision in *State v. Hopkins*, 317 Kan. ___, 537 P.3d 845, 850 (2023), we agree with Breese and, therefore, remand to the district court with directions to file an

amended journal entry of judgment unconditionally awarding Breese 523 days of jail time credit in this case.

Because we consider only a narrow sentencing issue, the relevant facts are few. In March 2022, as part of an agreement with the State, Breese pleaded guilty to three felonies: attempted aggravated assault of a law enforcement officer, possession of a weapon by a convicted felon, and fleeing or attempting to elude law enforcement. Consistent with the plea agreement, the district court ordered Breese to serve a controlling prison term of 28 months followed by 12 months of postrelease supervision.

When Breese committed those crimes, he was on postrelease supervision in a felony case from 2013. The Prisoner Review Board, therefore, had the authority to revoke Breese's postrelease supervision in the 2013 case and to order that he serve a prison sanction not to exceed the remainder of that time. K.S.A. 75-5217(c). The Board had taken no action against Breese when the district court sentenced him in this case.

For purposes of appeal, nobody disputes Breese had spent 523 days in pretrial detention awaiting disposition of the charges here. Under K.S.A. 2022 Supp. 21-6615(a), a defendant is entitled to "an allowance for the time . . . spent incarcerated pending the disposition of the . . . case." The allowance is commonly referred to as jail time credit. Over the years, however, courts have inconsistently determined and applied the credit. See *Hopkins*, 537 P.3d at 850-51.

The district court recognized that Breese had been in custody for 523 days and so indicated in that portion of the journal entry of judgment awarding jail time credit. The district court, however, added this qualification to the award: "From 11/06/20 to 04/13/22, defendant [was] also held on a KDOC warrant for a parole violation (13CR4). As this case is consecutive to all others, if defendant receives credit for these dates in 13CR4 then defendant is not eligible for duplicate credit for these dates in 20CR2042."

The qualification basically recited that Breese faced a possible prison sanction in the 2013 case and if the Prisoner Review Board applied some portion of the jail time to that sanction, then Breese should not get credit for that time in this case. We infer the district court wanted to prevent a double counting of some or all of the jail time credit in both the 2013 case and this case.

In September 2022, Breese's lawyer filed a motion in the district court asking that the limitation on the jail time credit be removed, so the full 523 days would apply in this case. The motion recited that after Breese was sentenced in this case, the Board ordered him to serve the balance of his postrelease supervision period in the 2013 case as a prison sanction without any reduction based on the 523 days of jail time credit. The motion further recited the Department of Corrections would not apply the credit toward Breese's sentence in this case because of the language in the journal entry and by default would apply the jail time against the revocation of postrelease supervision in the 2013 case.

At the hearing on the motion, Breese's lawyer voiced uncertainty about how the jail time had been or would be credited, except that it would not be in this case. He asked the district court to amend the journal entry to state the jail time credit should be applied against the sentence in this case without any qualification. He seemed to acknowledge if the Department of Corrections had applied the jail time to the 2013 case and then shifted the jail time to the sentence in this case, Breese might not be released from prison any sooner. The district court ultimately concluded the journal entry of judgment correctly stated the law, declined to modify its language, and denied Breese's motion. Breese has appealed.

Given the record on appeal, we do not see that there were disputed facts the district court resolved in denying the motion. The issue is a narrow legal one: Whether the journal entry properly conditioned the award of jail time credit by noting the award should be reduced by any time credited to another term of incarceration Breese might

have to serve in another case. Because this comes to us as a question of law, we owe no particular deference to the district court's decision to deny the motion. See *State v. Arnett*, 290 Kan. 41, 47, 223 P.3d 780 (2010); *State v. Mejia*, 58 Kan. App. 2d 229, 231-32, 466 P.3d 1217 (2020).

The district court did not have the benefit of *Hopkins* in considering Breese's motion. Although the parties filed their appellate briefs before *Hopkins* was issued, they have neither asked for additional briefing to address the decision nor submitted Rule 6.09 letters supplementing what they have already filed. See Kansas Supreme Court Rule 6.09 (2023 Kan. S. Ct. R. at 40). For purposes of deciding this case, we find *Hopkins* to be straightforward and, therefore, forge ahead. We turn to *Hopkins*.

To render some consistency going forward, the *Hopkins* court invoked first principles for assessing statutory language and closely examined K.S.A. 21-6615(a) to discern the legislative intent in permitting jail time credit. See *State v. Smith*, 309 Kan. 929, Syl. ¶ 2, 441 P.3d 472 (2019) ("fundamental rule" of statutory interpretation requires appellate courts to "give effect to the legislative intent" as found in statute's plain language). The court concluded: "Under the obvious and plain meaning of the words chosen by the Legislature, a defendant shall be awarded jail time credit for *all* time spent in custody pending the disposition of his or her case." 537 P.3d at 850. Because Hopkins spent 572 days in jail awaiting disposition of the charges in that case, he was entitled to jail time credit for those 572 days against the sentence he received. That was true even though Hopkins had been held on both a probation revocation warrant in another case and newer criminal charges for at least part of the time. The probation revocation and the other charges were ultimately dismissed in a negotiated plea deal.

In reaching its conclusion, the court categorically rejected judicial gloss on K.S.A. 2022 Supp. 21-6615(a) denying jail time credit to defendants held on multiple arrest warrants or charges in multiple cases. That longstanding gloss effectively denied jail time

credit to defendants unless they were being held "solely" on the charges for which they sought the credit. 537 P.3d at 849. The *Hopkins* court determined the judicial rule impermissibly created a limitation on jail time credit that had no anchor in the statutory language. 537 P.3d at 850.

The held-solely-on rule originated in *State v. Campbell*, 223 Kan. 528, 530-31, 575 P.2d 524 (1978), and runs through a long line of cases, including *State v. Calderon*, 233 Kan. 87, 98, 661 P.3d 781 (1983), and others the State cites to us in arguing against Breese's claim. The argument no longer has any legal force.

Applying *Hopkins* here leads to an obvious result. Breese must be awarded 523 days of jail time credit against his convictions and sentences in this case because he was detained on them through the sentencing hearing. The district court, in turn, erred in qualifying or imposing a condition on the award of jail time credit in the journal entry of judgment. We, therefore, remand to the district court with directions to enter an amended journal entry of judgment unconditionally awarding Breese 523 days of jail time credit against his sentences. We see no need for a hearing in the district court because *Hopkins* dictates the required outcome. But a nunc pro tunc order would not be the proper procedural device for correcting the journal entry. See *State v. Turner*, 317 Kan. 111, 113, 525 P.3d 326 (2023) (nunc pro tunc order appropriate to correct "arithmetic or clerical errors arising from oversight or omission").

How the Department of Corrections should administratively apply the jail time credit in determining when Breese should be released from prison is not before us. We offer no opinion on that determination.

Remanded to the district court with directions to enter an amended journal entry of judgment granting Breese 523 days of jail time credit without any stated qualifications or limitations.