NOT DESIGNATED FOR PUBLICATION

No. 124,233

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

NATHAN RAYE RUSS,
Appellant.

MEMORANDUM OPINION

Appeal from Trego District Court; THOMAS J. DREES, judge. Opinion filed May 12, 2023. Convictions affirmed, sentence vacated in part, and remanded with directions.

Korey A. Kaul, of Kansas Appellate Defender Office, for appellant.

Natalie Chalmers, assistant solicitor general, and *Derek Schmidt*, attorney general, for appellee.

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

PER CURIAM: A jury convicted Nathan Raye Russ of two counts of rape and one count of aggravated indecent liberties with a child, and the district court sentenced him to a lengthy prison sentence followed by lifetime parole and postrelease supervision should he ever be released. On appeal Russ alleges the district court erred by not including a jury instruction for the lesser included offense of attempted rape, and because insufficient evidence supported his conviction for aggravated indecent liberties with a child. He also challenges the imposition of lifetime postrelease supervision. This court finds no error requiring reversal of Russ' convictions but does find the imposition of lifetime

postrelease supervision an error. As such, the court affirms his convictions and sentences for rape and aggravated indecent liberties with a child but reverses the imposition of postrelease supervision.

FACTUAL AND PROCEDURAL BACKGROUND

The State charged Russ with two counts of rape and one count of aggravated indecent liberties with a child related to his abuse of a single victim. After living out of state with her mother, the victim returned to Kansas after her mother's unexpected and tragic death in a car accident. Before returning to Kansas, the victim lived with her maternal aunt, K.G., for approximately five months. While living with K.G., the victim never expressed concern about her interactions with Russ.

In October 2019 the victim eventually returned to Kansas, but K.G. had secured some custody agreement that required K.G. to confirm the victim's school enrollment in Kansas. A few days before the victim started first grade at the elementary school in Kansas, K.G. called the grade school counselor to notify the school about the victim's mother dying so the school could be aware of that recent traumatic event. On January 31, 2020, the school counselor went to retrieve the victim from class for a regular visit, and noticed that the victim walked awkwardly when she stood up from her desk. When asked, the victim said that her feet did not hurt, so the counselor asked where she was experiencing pain and, according to the counselor, the victim pointed to her bottom. The counselor immediately took the victim to the nurse's office.

The school nurse then performed a physical examination while the school counselor stayed in the room. The school nurse asked the victim where she was experiencing pain and the victim again said that her bottom hurt and that it hurt when she urinated. Because of this, the nurse told the victim to ask to see the nurse the next time she needed to use the restroom. The school counselor then took the victim back to her

office to talk. The school counselor asked the victim why she thought she was experiencing the pain. The victim then said, because of "what daddy and I do that I'm not supposed to talk about." The school counselor became more concerned and texted the secretary to contact the police.

At trial, the school counselor explained she was concerned because "it wasn't just based on that particular interaction. . . . I had noticed previous red flags that had me concerned, which is why I went straight from her saying that to asking for law enforcement." A few days before the victim reported the pain, the victim had licked one of her classmates on the face. When the school counselor asked the victim why she had licked her classmate, the victim explained that she only licked the classmate and did not kiss them. In response, the counselor asked if anyone had ever licked the victim before, and the victim explained that Russ had licked her. The counselor asked where Russ had licked her, and the victim "pointed to her chest where her breasts would be."

The school nurse testified that when the victim returned to her office later that day to urinate, the nurse reminded her to wipe and in response the victim said that Russ "likes it when I'm clean." The nurse testified that the victim then "took a piece of toilet paper, real small piece, and barely touched herself on the front and then threw it in the toilet." The nurse reported what happened to the school counselor and the chief of police, Ashley Garza, who had arrived at the school in response to the school's concerns. Based on that information, Garza decided to have an acute forensic child interview done with the victim, which Garza explained was typical when there was suspicion of child sexual abuse. Garza also requested that a sexual assault nurse examiner (SANE) examine the victim, which occurred later that same day at a medical center.

The SANE nurse examined the victim and used an alternate light source on the victim's clothing. The SANE nurse collected the victim's underwear, took DNA samples from the victim, and took photographs during the examination. When reviewing the

photographs, the SANE nurse noticed what appeared to be "bluish discoloration in the inner groin creases on both sides of [the victim's] inner leg." However, the SANE nurse noted that there was no acute or chronic injury to the victim's external vaginal genitalia, perineum, or anus. The SANE nurse also noted that the victim's hymen remained intact. The SANE nurse testified that the findings did not mean that the victim had not been sexually assaulted. The SANE nurse explained that there are a variety of reasons someone might not have injury after sexual contact, including the amount of or lack of force applied to the area. Chief Garza sent the sexual assault kit from the SANE nurse to the Kansas Bureau of Investigation (KBI). Garza later collected two buccal swabs from Russ. A forensic scientist for the KBI examined the sexual assault kit and tested the victim's underwear for possible DNA. Seminal fluid that was consistent with Russ' DNA was found in the crotch area of the victim's underwear.

After the investigation into the victim's possible sexual assault, the victim returned to live with her aunt, K.G. On that first night, K.G. said the victim was afraid that Russ could find her and get to her there, and K.G. had to reassure her that their gated community area and door locks would help keep her safe. According to K.G., the first night the victim returned to her house, the victim reported that Russ had sexually assaulted her and that he would touch her private parts in a way that hurt and would not stop when she asked. K.G. said the victim also told her that Russ had put his private parts inside of her private parts on a regular basis. When K.G. asked the victim if she had told anyone about what Russ did, the victim said she did not because Russ had threatened to take her to a house where no one could find her if she ever told.

K.G. took the victim to multiple doctors, including a sexual abuse therapist, her primary care physician, and some specialists. K.G. accompanied the victim to all of her doctor's appointments. During the visits to the doctors, information concerning what Russ did to the victim was disclosed. The victim testified that K.G. told the doctors about what Russ had done to her, and that the victim did not report the events to the doctors. The

information communicated included that Russ would regularly put his privates in the victim's privates, which hurt her hips, and that Russ threatened the victim about telling others what occurred.

K.G. corresponded with Chief Garza about the victim via email. In one of those emails, K.G. told Garza that a private counselor had been retained, and that "[w]e worked with her for the entire four months she was with us and there was never any hard evidence that she or the other children had been abused." K.G. also told Garza about what the victim told K.G. the night they returned to K.G.'s house.

The victim, who was between seven and eight years old at the time of trial, testified in two short increments. During the victim's initial testimony, she said that Russ "hurt me" when she lived in Kansas. She testified that she and Russ were alone when he hurt her and that she had her clothes off, and she confirmed that she asked Russ to stop but that he did not. The victim also said that she later told K.G. about what happened, and that K.G. told the doctors about it.

When the State recalled the victim, she discussed drawings that she had made "[w]ith paper, some crayons, and a stapler." The victim described the drawings, which included the words "The Horrible Book" on the first page, as pictures she drew of her and Russ. In one drawing, she identified Russ as "that man" and one page has the phrase "be quiet" written on it. The victim described one drawing as her and Russ alone in Russ' room on his bed with her clothes off. When asked if she remembers if Russ' clothes are off, she said, "[y]es, but it's hard to admit." The victim confirmed that what the drawing depicted happened more than once when she lived in Kansas after her mother died and that when it happened Russ touched her private parts, touched her private parts with his private parts, and stuck his private parts in her private parts.

The victim testified that she created the drawings with the help of her therapist when she was living with her aunt, K.G. The victim explained that the therapist did not draw anything but that "[s]he told me what to draw." She also testified that K.G. was with her during these appointments with her therapist and when she made the drawings.

At the conclusion of trial, the jury convicted Russ of both counts of rape and one count of aggravated indecent liberties with a child. The district court then sentenced Russ to consecutive hard 25 sentences for each rape conviction, and a concurrent hard 25 sentence for his aggravated indecent liberties conviction. The district court also imposed lifetime postrelease supervision.

DISCUSSION

Russ appeals his conviction, claiming that the district court erred by not giving the requested jury instruction for attempted rape and that there was insufficient evidence to support his conviction for indecent liberties with a child.

I. THE DISTRICT COURT DID NOT ERR BY REFUSING TO GIVE AN ATTEMPTED RAPE JURY INSTRUCTION

Russ requested the jury instruction for attempted rape, based on the lack of specific dates or even time frames for the rape charges, the lack of physical evidence of penetration, and the victim's original non-specific testimony. Russ' attorney explained that

> "[t]he limiting timeframe is October to January, and there's two counts. So she testified—she testified one way one time, she testified one way other time.
>
> "Your Honor, I think there is sufficient, based on those two individual testimonies from this child, that one of these could have been an attempt."

The court denied the request for an attempted rape jury instruction.

Appellate courts follow a three-step process when evaluating allegations of jury instruction errors: (1) determine whether there is a lack of appellate jurisdiction or a failure to preserve the issue for appeal; (2) consider the merits of the claim to determine whether error occurred at the district court; and (3) assess whether the error requires reversal. *State v. Holley*, 313 Kan. 249, 253, 485 P.3d 614 (2021). As to step one, Russ requested the attempted rape jury instruction and objected to the district court's exclusion of the instruction, thus Russ preserved the issue for appeal. Therefore, if this court finds an error in the second step of the analysis, that error "is reversible only if this court determines that the error was not harmless." 313 Kan. at 254.

In the second step of the analysis, this court determines whether a jury instruction for attempted rape is legally and factually appropriate in this case. *State v. Kleypas*, 305 Kan. 224, 302, 382 P.3d 373 (2016). These are questions of law over which this court exercises unlimited review, without deference to the district court's decision. A jury instruction is legally appropriate if it fairly and accurately states the applicable law. 305 Kan. at 302. The parties agree that an instruction for attempted rape is legally appropriate here because it is a lesser included offense of rape. See K.S.A. 2022 Supp. 21-5109(b)(3) (a crime is a lesser included crime if it is an attempt to commit the crime charged); *State v. Plummer*, 295 Kan. 156, 160-61, 283 P.3d 202 (2012) (identifying the inclusion of jury instructions for lesser included offenses as legally appropriate). Having found the attempted rape instruction legally appropriate, this court must then determine if it was factually appropriate.

A jury instruction is factually appropriate if it is "supported by the particular facts of the case at bar." 295 Kan. at 161. In determining whether an instruction was factually appropriate, this court must determine whether there was sufficient evidence, viewed in

the light more favorable to Russ, as the party who requested the disputed instruction, that would have supported the instruction. *Holley*, 313 Kan. at 255.

Russ argues that an instruction for attempted rape was factually appropriate because the SANE nurse testified there were no acute or chronic injuries to the victim's perineum or anus, and that the victim's hymen remained intact. When requesting the instruction, Russ' attorney claimed the victim had testified one way and then another, and the inclusion of more than one count supported the inclusion of an attempted rape instruction. On appeal, Russ cites to no testimony from the victim, other than calling her original testimony "sparse," to support an attempted rape instruction. The testimony from the SANE nurse appears to be Russ' only support for his assertion that the lack of physical trauma supports inclusion of an attempted rape instruction, and Russ cites no caselaw supporting such an assertion.

Russ' argument is unavailing. The SANE nurse testified that a lack of physical injury does not mean there had been no sexual abuse or penetration. The nurse explained that "[f]indings of injury or no injury can both be consistent with a history of sexual abuse." She went on to explain that the amount of force, type of contact, and use of lubrication affect the appearance of physical injuries. Additionally, she said a normal physical examination is a common finding with SANE examinations. To sustain a conviction for rape, the State need not demonstrate the victim suffered physical injury to her vagina, vulva, labia, or any other part of the female sex organ. See *State v. Borthwick*, 255 Kan. 899, 908, 914, 880 P.2d 1261 (1994). Russ' crime of conviction required the State prove that he had "sexual intercourse with a child who is under 14 years of age." K.S.A. 2019 Supp. 21-5503(a)(3). Sexual intercourse is defined as "[a]ny penetration of the female sex organ," which includes "any penetration, however slight." K.S.A. 2019 Supp. 21-5501(a) (defining "[s]exual intercourse" as "any penetration of the female sex organ by a finger, the male sex organ or any object").

Moreover, Russ disregards trial testimony that does not factually support an instruction for attempted rape. On recall, the victim, who was well under the age of 14 at the time of the allegations, confirmed that Russ penetrated her private parts with his private parts. This testimony is also consistent with K.G.'s testimony that the victim had told her Russ put his privates inside her privates on a regular basis after the victim had returned to Kansas. There is no testimony that Russ had the intent to rape the victim, but that he failed to penetrate her sex organ. See K.S.A. 2019 Supp. 21-5301(a) ("An attempt is any overt act toward the perpetration of a crime done by a person who intends to commit such crime but fails in the perpetration thereof or is prevented or intercepted in executing such crime.").

While the lack of physical injury to the young victim's external and internal sex organs may contradict the other evidence of penetration—that alone does not factually support the inclusion of a jury instruction for attempted rape. Russ seeks this court to reweigh the evidence relied upon by the jury and give more weight to the physical findings than the victim's testimony. This court cannot do that. There is simply no evidence to demonstrate that the jury instruction for attempted rape was supported by the facts of the case. There is no evidence that Russ intended to rape the victim, took steps to rape her, but that he failed to penetrate her sex organ. The jury instruction for attempted rape was not factually appropriate, and thus the district court did not err in refusing to include the instruction.

Because the court did not err by refusing to include an instruction for attempted rape, there is no error for this court to analyze in step three.

II. SUFFICIENT EVIDENCE SUPPORTED RUSS' CONVICTION FOR AGGRAVATED INDECENT LIBERTIES WITH A CHILD

Russ next claims the State presented insufficient evidence to support his conviction of aggravated indecent liberties with a child. In support of this claim, Russ asserts two arguments. First, he claims there is insufficient evidence to prove his actions occurred in Trego County, Kansas. Second, he claims there is insufficient evidence to prove his actions were lewd. This court reviews challenges to the sufficiency of the evidence to determine whether the evidence, when viewed in a light more favorable to the defendant, was sufficient such that "a rational factfinder could have found the defendant guilty beyond a reasonable doubt." *State v. Aguirre*, 313 Kan. 189, 209, 485 P.3d 576 (2021).

Venue

Russ challenges the district court's jurisdiction by alleging that the State failed to prove that his actions underlying the charge of aggravated indecent liberties with a child took place in Trego County, Kansas. "[T]he location in which a crime is committed is a jurisdictional fact that determines the appropriate venue for prosecuting a defendant for the crimes." *State v. Hillard*, 315 Kan. 732, 774, 511 P.3d 883 (2022); see also K.S.A. 22-2602 (generally, the prosecution of a criminal charge "shall be in the county where the crime was committed"). Whether jurisdiction exists is a question of law over which this court exercises unlimited review. *State v. Lundberg*, 310 Kan. 165, 170, 445 P.3d 1113 (2019).

To determine if a particular court is the proper venue, the court must determine "which act or acts constituted the crime and then determine where those acts took place." *State v. Torres*, 53 Kan. App. 2d 258, 267, 386 P.3d 532 (2016), *aff'd* 308 Kan. 476, 421 P.3d 733 (2018). While there is no direct evidence, the circumstantial evidence was

sufficient to support the fact-finder's conclusion that the charged offenses occurred in Trego County, Kansas. A fact-finder may rely on circumstantial evidence and reasonable inferences drawn therefrom to support even the most serious convictions. The circumstantial evidence need not exclude every other reasonable conclusion. See, e.g., *State v. Colson*, 312 Kan. 739, 750, 480 P.3d 167 (2021).

During the relevant time frame, there is no evidence of any contact between Russ and the victim between June and October 2019 when the victim lived out of state. The victim returned to live in Kansas in October 2019. The victim was enrolled in public school in Trego County, Kansas, from October 2019 until January 2020 when she returned to live with her maternal aunt out of state after reporting Russ' inappropriate touching. The trial testimony related to Russ' charge of aggravated indecent liberties with a child demonstrated that the offense occurred in Kansas. First, when the victim lived out of state—before returning to Kansas in October 2019—the victim had never reported any inappropriate physical contact from or by Russ. The first time the victim stated that Russ inappropriately touched her was when the victim lived in Trego County, Kansas. The victim's aunt testified that the victim had never expressed concerns about Russ' behavior or reported that he touched her inappropriately when the victim lived out of state with her aunt.

Additionally, it was the victim's elementary school counselor, who was located in a city in Trego County, Kansas, who provided testimony supporting Russ' conviction for aggravated indecent liberties with a child. The school counselor testified that the victim licked a classmate, at the school located in Trego County, Kansas, and that the counselor noticed the victim walking awkwardly at school in January 2020. Chief Garza testified that Russ lived in a city in Trego County, Kansas, during the time frame when the victim notified the school counselor that Russ had licked her and when the counselor noticed the victim walking awkwardly.

Furthermore, during the victim's testimony, the following exchange occurred:

"Q. Okay. Did you live with [Russ] after your mom passed away?
"A. Yes.
"Q. Were your brothers there, too?
"A. Yes.
"Q. Do you remember who lived in the house with you?
"A. Yes. My grandparents.
. . . .
"Q. . . . Do you know why you went back to live with [K.G.], your mom now?
"A. Yes.
"Q. And why is that?
"A. Because [Russ] hurt me.
"Q. Okay. I'm sorry. Did that happen while you were in Kansas?
"A. Yes."

All the testimony concerned Russ' actions in Kansas. There was no testimony presented that Russ' actions took place anywhere other than Kansas. Moreover, there was no evidence presented that Russ spent any significant time with the victim outside of Kansas. The evidence presented at trial was more than sufficient to prove that Russ' actions underlying his convictions took place within Trego County, Kansas. See *Aguirre*, 313 Kan. at 209. Thus, venue was proper in Trego County, Kansas. See K.S.A. 22-2602.

Lewd Fondling or Touching

In the second part of his challenge to the sufficiency of the evidence supporting his aggravated indecent liberties with a child conviction, Russ challenges the sufficiency of the evidence that his actions were lewd. To sustain the conviction for aggravated indecent liberties with a child, the State was required to prove: (1) the victim was under the age of 14; and (2) that Russ engaged in "[a]ny lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the

sexual desires of either the child or the offender, or both." K.S.A. 2019 Supp. 21-5506(b)(3)(A). The district court gave an instruction regarding aggravated indecent liberties with a child which included the following definition of "lewd fondling or touching," derived from the Pattern Instructions for Kansas (PIK):

> "'Lewd fondling or touching' means fondling or touching in a manner which tends to undermine the morals of a child and is so clearly offensive as to outrage the moral senses of a reasonable person. Lewd fondling or touching does not require contact with the sex organ of one or the other." PIK Crim. 4th 55.121 (2016 Supp.).

Russ claims that "the record is completely devoid of any context or circumstances of how or when or why [he] licked [the victim's] chest." Russ apparently argues there could be an innocuous explanation for licking the victim's chest. Rather than cite to cases supporting the argument that licking a child's breast area is not lewd, Russ attempts to distinguish his conduct from that in *State v. Rutherford*, 39 Kan. App. 2d 767, 184 P.3d 959 (2008), and *State v. Stout*, 34 Kan. App. 2d 83, 114 P.3d 989 (2005). In *Stout*, during one overnight stay at Stout's house, the victim kissed Stout, but Stout pulled away. However, later that night the victim "initiated another kiss, this time described as a 'french kiss' or an open mouth kiss where her tongue touched Stout's tongue for a couple of minutes. After the kiss, the two professed their love for each other." 34 Kan. App. 2d at 85. The State charged Stout with one count of unlawful sexual relations based on this kiss, which required the State to prove lewd fondling or touching. See K.S.A. 2004 Supp. 21-3520(a)(8); 34 Kan. App. 2d at 85-86. On appeal, a panel of this court held that "[w]hether such contact was lewd given the totality of the circumstances was a question for the jury." 34 Kan. App. 2d at 88. The panel went on to find that the facts "support[ed] the occurrence of a lengthy, 'good,' 'deep,' 'passionate,' 'intimate,' 'romantic,' and 'memorable' french kiss in the bed of the defendant after an overnight stay, and the kiss achieved emotional arousal and was followed by professions of true love and repeated

encounters involving the same conduct," which the panel found sufficient to constitute lewd fondling or touching. 34 Kan. App. 2d at 89.

In *Rutherford*, the State charged Rutherford with aggravated criminal sodomy and aggravated indecent liberties with a child. 39 Kan. App. 2d at 768. On appeal, Rutherford claimed "that the act of kissing [the victim] is insufficient to support a finding that he engaged in lewd fondling or touching done with the intent to arouse or to satisfy sexual desires." 39 Kan. App. 2d at 775. A panel of this court disagreed, finding the evidence sufficient to support the jury's conclusion Rutherford engaged in lewd fondling or touching because:

> "Rutherford admitted that the way he kissed C.R. may have been inappropriate. There was evidence that Rutherford kissed C.R. despite being asked to stop, that Rutherford kissed C.R. on the lips, that Rutherford told other adults that C.R. had pretty lips and would be a good kisser because guys like full lips, and that Rutherford kissed C.R. 'like you would kiss a girlfriend.'" 39 Kan. App. 2d at 776.

It is unclear what assistance Russ believes either of these cases offer his claim. If anything, this case is similar to *Rutherford* in that the victim stated that Russ continued to inappropriately touch her despite her asking him to stop. These cases merely demonstrate situations where this court has found the defendant's conduct lewd, but provide no support for Russ' argument that his conduct was not lewd.

When the school counselor asked where Russ had licked her, the victim "pointed to her chest where her breasts would be." As a first-grader, the victim pointed to the location where her breasts would be located if she had them. Whether a touching is legally "lewd" depends on the objective type and location of the touch and the circumstances surrounding that touch. It is "determined by considering the common meaning of the term 'lewd,' that is whether a touching is sexually unchaste or licentious; suggestive of or tending to moral looseness; inciting to sensual desire or imagination; or

indecent, obscene, or salacious." *State v. Dinh Loc Ta*, 296 Kan. 230, Syl. ¶ 5, 290 P.3d 652 (2012). When analyzing this issue, the court looks to whether the "touching tends to undermine the morals of a child and is so clearly offensive as to outrage the moral senses of a reasonable person." 296 Kan. 230, Syl. ¶ 5. There was no evidence presented of a non-lewd reason for Russ to lick the breast area of a six- or seven-year-old child. Not only was there no evidence of an innocuous explanation for Russ' licking—this court cannot imagine such a scenario.

Kansas appellate courts have analyzed whether someone touching a hand, leg, face, or hair is lewd as well as whether kissing, laying on top of, or moving a child to a person's lap is lewd. 296 Kan. at 240-42; *State v. Ramos*, 240 Kan. 485, 486-87, 731 P.2d 837 (1987), *superseded by statute on other grounds as stated in State v. Hutchcraft*, 242 Kan. 55, 59-61, 744 P.2d 849 (1987); *State v. Colston*, 290 Kan. 952, 967, 235 P.3d 1234 (2010); *State v. Co*, No. 122,797, 2022 WL 816528, at *4-6 (Kan. App. 2022) (unpublished opinion). In each such circumstance, the court had to determine whether the type of touching was of such a nature that it would undermine the morals of the person touched, or if it was clearly offensive or outrageous to a reasonable person. This can be a difficult analysis when the touch is one that could occur under innocuous circumstances, such as in the office, between friends, during the course of parenting, or even with a stranger. However, that is not the case here. An adult licking the breast area of a child aged six or seven under circumstances present here—when the child testified that she had asked the perpetrator to stop touching her in inappropriate ways, that the perpetrator had touched her in ways that hurt her, and that the perpetrator had penetrated her "private parts" with his "private parts"—leaves no doubt that the licking meets the definition of lewd fondling or touching. The jury heard all the testimony and evidence in this case and found Russ guilty of aggravated indecent liberties with a child, and this court finds sufficient evidence to support that conviction.

III. THE DISTRICT COURT ERRED IN ORDERING LIFETIME POSTRELEASE SUPERVISION

Russ' final claim is that the district court erred when it ordered lifetime postrelease supervision in addition to lifetime parole. Appellate courts exercise unlimited review over questions of law, including whether the district court imposed an illegal sentence in violation of applicable statutes. *State v. Mitchell*, 315 Kan. 156, 158, 505 P.3d 739 (2022). Although Russ did not raise this issue to the district court, this court may review this issue because courts "may correct an illegal sentence at any time while the defendant is serving such sentence." K.S.A. 2022 Supp. 22-3504(a).

The State concedes that Russ is not subject to lifetime postrelease supervision. As stated above, Russ was convicted of rape and aggravated indecent liberties with a child. Both crimes were off-grid felonies that carried life sentences, and the district court imposed consecutive hard 25 sentences for each rape conviction, as well as a concurrent hard 25 sentence for the aggravated indecent liberties with a child conviction. See K.S.A. 2019 Supp. 21-5503(a)(3), (b)(2); K.S.A. 2019 Supp. 21-5506(b)(3)(A), (c)(3); K.S.A. 2019 Supp. 21-6627(a)(1)(B), (C). The district court also imposed a term of lifetime postrelease supervision and lifetime parole. However, the Kansas Supreme Court has held that "'a sentencing court has no authority to order a term of postrelease supervision in conjunction with an off-grid indeterminate life sentence.'" *State v. Fraire*, 312 Kan. 786, 797, 481 P.3d 129 (2021) (quoting *State v. Cash*, 293 Kan. 326, Syl. ¶ 2, 263 P.3d 786 [2011]). Thus, the district court erred when it imposed lifetime postrelease supervision.

CONCLUSION

After being convicted of two counts of rape and one count of aggravated indecent liberties with a child, Russ appeals his convictions and the district court's imposition of lifetime postrelease supervision. This court finds no error requiring reversal of any of

Russ' convictions, but agrees that the district court erred in ordering lifetime postrelease supervision. Because this opinion is determinative of the sentencing issue, this court may order the sentence corrected without a new sentence hearing. See *State v. Boswell*, 314 Kan. 408, 418, 499 P.3d 1122 (2021).

Russ' convictions are affirmed. The district court's journal entry erroneously included lifetime postrelease supervision, and thus this court remands this case with directions for the district court to issue a nunc pro tunc order to correct that portion of the journal entry.

Convictions affirmed, sentence vacated in part, and remanded with directions.