

NOT DESIGNATED FOR PUBLICATION

No. 124,691

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

ROBERT VACA,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Wyandotte District Court; JENNIFER L. MYERS, judge. Opinion filed June 2, 2023.  
Affirmed.

*Kasper Schirer*, of Kansas Appellate Defender Office, for appellant.

*Mark Q. Brinkworth*, assistant district attorney, *Mark A. Dupree Sr.*, district attorney, and *Derek Schmidt*, attorney general, for appellee.

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

PER CURIAM: Robert Vaca is serving a sentence in Kansas after accepting a plea agreement wherein he pled no contest to possession of methamphetamine with intent to distribute. Under unique interjurisdictional circumstances, rather than serve his sentence under the authority of the Kansas Department of Corrections (KDOC), Vaca sought to be released to federal authorities for an earlier and unrelated federal conviction in the United States District Court for the Western District of Missouri for which he was on postrelease supervision at the time of his conviction in Kansas. However, due to circumstances

beyond the control of the KDOC, the district court, and—as explained herein—this court, the federal authorities have thus far declined to transfer Vaca to their custody.

Vaca essentially seeks to force the transfer through a motion to correct illegal sentence and motion to enforce plea agreement, and he argues that he is being forced to serve more time than the district court intended. However, Vaca's sentence is not illegal. Thus, the district court's denial of his motions is affirmed.

#### FACTUAL AND PROCEDURAL BACKGROUND

Vaca pled no contest to possession of methamphetamine with intent to distribute, a severity level 2 drug felony, on December 17, 2018. Vaca committed the criminal action supporting his underlying charges in Kansas in January 2018 while on postrelease supervision from a federal conviction originating in Missouri. As a result of this new Kansas conviction, Vaca anticipated that his federal postrelease supervision would be revoked, and he would go back to federal prison to serve approximately two years in that case.

At the time of the February 2019 Kansas sentencing hearing, the Western District of Missouri federal court had not yet determined whether to revoke Vaca's federal probation. Vaca sought a departure sentence of 48 months' imprisonment. The State agreed to a departure, but it requested 84 months with his Kansas prison sentence to run consecutive to any federal sentence imposed if his probation was revoked. The district court sentenced Vaca to 78 months in prison with 36 months of postrelease supervision and ordered the sentence run concurrent with his federal sentence once decided. The court also ordered that Vaca be relinquished into federal custody so that—if his federal probation was revoked—he could begin by serving his time in federal prison. Under that circumstance, his federal prison sentence would run concurrent with his Kansas sentence, and he would then be transferred back to Kansas to serve his remaining time.

In January 2020, Vaca wrote a letter to the sentencing judge explaining that federal authorities had not picked him up from Kansas and he requested assistance. In March and August 2021, Vaca filed pro se motions to correct his sentence and to enforce his plea agreement. He argued that his sentence should be corrected because federal authorities had not accepted his transfer and, as a result, his Kansas and federal sentences were not running concurrent. In his motion to enforce his plea agreement, Vaca argued that the KDOC failed to relinquish him into federal custody, which resulted in him serving his prison sentence in Kansas. He alleged he was stabbed in prison, and he had a federal detainer which denied him access to programs, jobs, or the opportunity to transfer to a minimum security facility in Kansas. He requested the district court order that he be transferred to the federal authorities consistent with his sentence.

On December 14, 2021, the district court held a hearing to address Vaca's pro se motions where his appointed counsel candidly admitted that the sentence was not illegal and Wyandotte County had upheld its part of the plea agreement. The district court found that the State had done what it could to relinquish Vaca to federal authorities, but it could not force the federal authorities to act or the Western District of Missouri federal court to intervene. Vaca alleged that he had written the federal court regarding the issue and received a reply that the KDOC was failing to follow the plea agreement. However, he failed to submit that alleged letter to the district court, and the alleged letter is not available in the record on appeal.

The district court denied Vaca's motions, and he appeals.

## DISCUSSION

On appeal, Vaca argues the district court erred in denying his request for relief and asks this court to take any action it can to ensure justice in this matter. He asserts that because the federal authorities failed to take him into custody, he is now serving his

entire 78-month Kansas sentence. The federal authorities then could wait and revoke his probation after he serves the entire Kansas sentence. This means that, if nothing changes, his Kansas sentence will not run concurrent with the federal sentence, and he will serve a greater total sentence than the district court intended.

Vaca's assessment is correct. The record on appeal demonstrates that the district court intended to allow Vaca to serve his Kansas sentence concurrent with his federal sentence that might result from revocation of his probation. However, as the district court explained at sentencing, whether Vaca's Kansas sentence would run concurrent with his federal sentence would ultimately depend on what the federal authorities decided to do.

"I'm going to sentence you to 78 months with the Department of Corrections. This case will run concurrent with your Missouri [federal sentence]. That will be followed by 36 months of post release supervision. So what—what you're telling me, you were asking for 48 months, but you were also asking it to go concurrent. I think that that was—that's too much of a break considering you were on probation for the same crime at the time you committed this.

....

"... So what I did was I took the 48 months, you said you're gonna have about two and-a-half years, so that's about another 30 months. So I ran it concurrent, but added that on to the 48 that you were asking for. So if you—if—I'll release you to Missouri if that helps you out. . . . [B]ut I'll relinquish you to Missouri and then if they don't revoke you, then you're gonna have that same amount of time to do for Kansas.

....

"If they do, then you're getting credit all at the same time. So basically you're getting the same amount of a sentence, it just depends on whether—what Missouri does 'cause I don't know what they're gonna do, okay?"

The district court granted Vaca a substantial departure from the maximum possible sentence it could have imposed. Additionally, the district court attempted to make its sentence run concurrent with Vaca's likely sentence if his federal probation was revoked, but the court explained the concurrent credit was not guaranteed. The concurrent credit depended on whether the federal authorities would accept Vaca's relinquishment.

On appeal, Vaca challenges the district court's denial of his motion to correct an illegal sentence and enforce his plea agreement. However, as Vaca appears to acknowledge, his sentence is not illegal because the district court sentenced him within the sentencing guidelines and pursuant to the plea agreement. Vaca instead asserts that he will potentially serve more total time than the district court intended if the federal authorities do not accept his transfer before the end of his 78-month Kansas sentence. Unfortunately for Vaca, this arguably unfair result has not created an illegal sentence. It does not lengthen his Kansas sentence, and Kansas cannot force the federal authorities to timely exercise their authority to detain Vaca. Additionally, Vaca's argument is speculative. It is possible the federal authorities could accept Vaca's transfer before he serves his full Kansas sentence; the federal authorities could also simply decide not to revoke his probation given his Kansas sentence.

This court has jurisdiction to correct an illegal sentence at any time while the defendant is serving the sentence. K.S.A. 2022 Supp. 22-3504(a). An illegal sentence is defined as a sentence that (1) is imposed by a court without jurisdiction; (2) does not conform to the applicable statutory provisions, either in character or the term of punishment; or (3) is ambiguous about the time and manner in which it is to be served. K.S.A. 2022 Supp. 22-3504(c)(1); see *State v. Mitchell*, 315 Kan. 156, 158, 505 P.3d 739 (2022). Whether a sentence is illegal is a question of law over which this court exercises unlimited review. 315 Kan. at 158. This court finds no basis for any argument that Vaca's sentence was imposed without jurisdiction, did not conform to the applicable statute, or was ambiguous as to the time or manner in which it was to be served. Thus, Vaca's

sentence was not illegal. See K.S.A. 2022 Supp. 22-3504(c)(1). Moreover, Vaca has not requested relief from the sentencing scheme under any other statutory or constitutional authority.

Having determined that Vaca's sentence is not illegal pursuant to K.S.A. 22-3504, the district court's denial of his motions to correct his sentence and enforce his plea agreement and sentence are affirmed.

Affirmed.