

NOT DESIGNATED FOR PUBLICATION

No. 124,756

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

JOHN K. DELANEY,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Reno District Court; JOSEPH L. MCCARVILLE III. Opinion filed March 17, 2023.  
Appeal dismissed.

*Shannon S. Crane*, of Hutchinson, for appellant.

*Jamie L. Karasek*, assistant district attorney, *Thomas Stanton*, district attorney, and *Derek Schmidt*, attorney general, for appellee.

Before ISHERWOOD, P.J., MALONE and WARNER, JJ.

PER CURIAM: In this appeal, John Delaney disputes how the district court computed his jail credit for the time he spent in custody before he was sentenced for a violation of the Kansas Offender Registration Act (KORA). But Delaney is no longer incarcerated for that sentence, so any ruling on the jail-credit issue would not have any practical effect. We thus dismiss this appeal as moot.

## FACTUAL AND PROCEDURAL BACKGROUND

In 2015, Delaney pleaded guilty to failing to register under KORA. The district court sentenced him to 39 months in prison, then suspended that sentence and imposed probation. Later that year, the district court found that Delaney had violated his probation and revoked it, ordering him to serve the 39-month prison term. Both before and during this case, Delaney had other ongoing, unrelated criminal cases. Through these various proceedings, Delaney accumulated fragmented periods of jail credit that applied in different ways to different sentences.

In August 2021, Delaney filed a motion to correct the jail credit he had accumulated toward his sentence for the KORA violation. He argued that the district court had miscalculated the amount of credit due, and thus he had served jail time that was never applied to any of his sentences. The district court denied Delaney's motion after a hearing.

Delaney appealed. When his attorney docketed the appeal in January 2022, she noted that Delaney was no longer incarcerated for the KORA violation. The attorney later explained that the Department of Corrections website listed Delaney as having been released and that she did not know where he was.

Despite Delaney's apparent release, his attorney now argues that this appeal is not moot because the State never filed a notice of change in custodial status under Supreme Court Rule 2.042 (2023 Kan. S. Ct. R. at 18), and the court cannot depend on the Department of Corrections website to show that Delaney was released. The State responds that it never filed a notice under Rule 2.042 because the docketing statement already indicated that Delaney had been released from prison. Thus, the parties agree that Delaney is no longer in custody for the KORA violation.

## DISCUSSION

Unlike the legislative and executive branches, Kansas courts may not issue advisory opinions. *State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 898, 179 P.3d 366 (2008). Instead, courts decide concrete questions that will impact the parties in a particular case. A court's role is thus to "determine real controversies relative to the legal rights of persons and properties which are actually involved in the particular case properly brought before it and to adjudicate those rights in such manner that the determination will be operative, final, and conclusive." *State v. Roat*, 311 Kan. 581, 590, 466 P.3d 439 (2020) (quoting *State v. Hilton*, 295 Kan. 845, 849, 286 P.3d 871 [2012]).

As a corollary to this principle, even if a case begins with an active dispute, a court generally will not continue to hear it if the dispute becomes "moot." *Roat*, 311 Kan. at 584. An issue is moot when "the actual controversy" has ended, and any decision "would be ineffectual for any purpose" and "would not impact any of the parties' rights." 311 Kan. at 584. An appeal of a person's sentence is usually moot after the person has completed the sentence. See 311 Kan. at 596.

When a criminal defendant appeals a district-court decision, he or she must file a docketing statement with the appellate courts that contains basic, preliminary information about the case. See Supreme Court Rule 2.041 (2023 Kan. S. Ct. R. at 18). This information includes indicating whether the defendant is currently incarcerated. Once an appeal has been docketed, the responsibility shifts to the State to apprise the appellate courts of "any change in the defendant's custodial status while the appeal is pending." Rule 2.042 (2023 Kan. S. Ct. R. at 18).

At some point after the district court denied Delaney's jail-credit motion, he apparently was released from custody. When Delaney's attorney docketed this appeal, she included the required information about his custodial status, stating he was no longer

incarcerated. Under Rule 2.042, because that information was in the docketing statement, the State did not have to file a notice of change in custodial status. No one contends that Delaney's custodial status changed after his attorney docketed the appeal.

We conclude, based on these facts, that Delaney's jail-credit challenge has become moot. Delaney has served his sentence, and the prison term cannot now be shortened to account for a miscalculation of his jail-time credit (even if there were credits to be allotted). And though Delaney's docketing statement indicates he is now on postrelease supervision, jail credit "cannot be 'banked' to count against a violation of postrelease supervision in this case or a sentence for some future crime." *State v. McLoud*, No. 121,367, 2020 WL 6533113, at \*1 (Kan. App. 2020) (unpublished opinion); accord *State v. Gaudina*, 284 Kan. 354, 367, 160 P.3d 854 (2007) ("[A]ny credit for time served pending the disposition of a case applies only to the confinement portion of the defendant's sentence. Postrelease supervision is not confinement and, therefore, credit for time spent incarcerated was not applicable to [the defendant's] postrelease supervision period.").

Because Delaney is no longer in custody for his KORA violation, any decision about how much jail credit he had for that sentence could not affect his completed sentence. See *McLoud*, 2020 WL 6533113, at \*1; *State v. Reider*, No. 120,534, 2020 WL 967859, at \*1 (Kan. App. 2020) (unpublished opinion); *State v. Ramsey*, No. 111,163, 2015 WL 6444242, at \*1 (Kan. App. 2015) (unpublished opinion), *rev. denied* 304 Kan. 1021 (2016). Nor does he claim that this case presents a legal issue of broad public importance or a recurrent legal issue that would otherwise evade review. We therefore dismiss his appeal.

Appeal dismissed.