

NOT DESIGNATED FOR PUBLICATION

No. 125,047

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

MARLIN D. WILLIAMS,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Sedgwick District Court; SETH L. RUNDLE, judge. Opinion filed March 31, 2023.  
Sentence vacated in part and case remanded with directions.

*Kristen B. Patty*, of Wichita, for appellant.

*Marlin D. Williams*, appellant pro se.

*Lance J. Gillett*, assistant district attorney, *Marc Bennett*, district attorney, and *Derek Schmidt*, attorney general, for appellee.

Before GARDNER, P.J., MALONE and HILL, JJ.

PER CURIAM: Serving a sentence for aggravated trafficking, Marlin D. Williams asks us to direct the district court to "uncheck the box" on his journal entry that shows his crime was sexually motivated.

The State opposes Williams' request, but because this appeal has been brought, the State has discovered that Williams' sentence has an illegal postrelease supervision term.

The term is stated in the journal entry as lifetime supervision, but it should be supervision for 36 months.

Our review of this prosecution leads us to grant Williams' motion for an order nunc pro tunc but not to the extent he asks. We remand the case so the district court can correct the journal entry by leaving both boxes unchecked. In addition, Williams' postrelease supervision term should be set at 36 months.

*This prosecution has an extensive procedural history.*

In September 2009, the jury convicted Williams of aggravated trafficking based on his recruitment of L.M. into prostitution in April 2007. At the time, L.M. was 15 years old. Williams found L.M. in Wichita and invited her to travel with him and a young woman to Dallas, Texas, to work for him as a prostitute.

Before the group left Wichita, Williams instructed L.M. and the woman to undress so he could look at them. Upon arrival in Dallas, Williams demanded oral sex from L.M. and she complied because she felt she had to. Williams gave L.M. condoms and a phone, told her how much to charge for sex acts, and then collected the money L.M. earned from performing sex acts. *State v. Williams*, 299 Kan. 911, 913-16, 329 P.3d 400 (2014).

In May 2007 a Dallas police officer encountered L.M. walking along the highway. The officer learned L.M. was reported as a runaway out of Wichita. He took L.M. in for an interview and she was ultimately flown back to Kansas. There, L.M. spoke with police officers about what happened in Dallas, and Williams was prosecuted for aggravated trafficking. *Williams*, 299 Kan. at 913-16.

This court and the Kansas Supreme Court have given greater details of the facts in *State v. Williams*, 46 Kan. App. 2d 36, 257 P.3d 849 (2011), and *Williams*, 299 Kan. at 913.

After losing his direct appeals, Williams has sought relief by bringing several habeas motions involving unrelated issues, all of which have been denied. See *Williams v. State*, No. 122,776, 2022 WL 1279271 (Kan. App. 2022) (unpublished opinion); *Williams v. State*, No. 119,413, 2019 WL 3367587 (Kan. App. 2019) (unpublished opinion); *Williams v. State*, No. 114,200, 2016 WL 7428361 (Kan. App. 2016) (unpublished opinion).

After that, in October 2021, Williams filed an "Ex Parte Request for Nunc Pro Tunc to Effective Compliance with K.S.A. 22-3426." Williams argued that the district court never found that his crime was sexually motivated as stated in the journal entry. Williams asked the court to amend the journal entry by marking "no" in the section that asks whether the crime was sexually motivated. The State opposed the request, and the court summarily denied the motion. Williams filed a response which the district court construed as a motion to reconsider and denied the motion. Williams timely appeals.

*Is this an illegal sentence?*

The argument that Williams brings us in both briefs—his own and the one filed by his attorney—is simple. When sentence was imposed, the judge, from the bench, made no finding that Williams' crime was sexually motivated. Therefore, according to Williams, that portion of his sentence must be vacated and this court should order the district court to amend the journal entry. He frames this as an illegal sentence issue.

We have our doubts about that framing.

According to the statute, an illegal sentence is a sentence that

- (1) is imposed by a court without jurisdiction;
- (2) does not conform to the applicable statutory provision, 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).

Even though Williams argues that this is an illegal sentence issue, he does not argue that his sentence is illegal because of any of the enumerated statutory reasons. Nor does he mention the legality of his sentence outside of stating the standard of review. Instead, he merely asserts that this court "must vacate the portion of his sentence and remand for the district court to file a corrected journal entry."

In our view, this checked box finding is just that—a check-the-box indication of a finding of fact by the court that this crime was sexually motivated. Whether this box is marked "yes" or "no" does not alter Williams' sentence one iota. He will serve no more or no less time behind bars because of how this box was marked. It does not pertain to his sentence but is a comment about why Williams committed this crime.

This means that Williams' reliance on the rule in *Abasolo v. State*, 284 Kan. 299, 304, 160 P.3d 471 (2007), is misplaced. That rule provides that when a sentence that is announced from the bench differs from the sentence described in the journal entry, the orally pronounced sentence controls. Since the district court found that Williams' crime was sexually motivated but it is not part of his sentence, we do not see that *Abasolo* applies.

We recognize that the comment in the journal entry can have a practical consequence. In some cases, the practical effect of a crime being found to be sexually motivated is that the offender must register as a sex offender under the Kansas Offender

Registration Act, K.S.A. 22-4901 et seq. But Williams was not ordered to register as a sex offender at sentencing or in the journal entry of judgment.

We note in passing, without ruling on the question, that Williams may have to register as a sex offender upon his release from prison whether or not this box is checked. This is because his crime of conviction is now categorized as a sexually violent crime. See K.S.A. 2022 Supp. 22-4902(c)(13). And K.S.A. 2022 Supp. 22-4902(b)(1) requires offender registration for anyone who, on or after April 14, 1994, is convicted of a sexually violent crime. But that question is not before us.

Because the district court did not expressly find that the crime was sexually motivated, we hold the checked box "yes" is a clerical error governed by K.S.A. 2022 Supp. 22-3504(b). But that does not mean that the "no" box must be checked. After all, the court did not find the crime was not sexually motivated. On remand, neither box should be checked.

We vacate the postrelease supervision component of Williams' sentence and remand with directions consistent with this opinion.

Sentence vacated in part and case remanded with directions.