

CORRECTED OPINION<sup>1</sup>

IN THE SUPREME COURT OF THE STATE OF KANSAS

Nos. 125,505  
125,506  
125,507

STATE OF KANSAS,  
*Appellee,*

v.

NATHANIEL TURNER III,  
*Appellant.*

SYLLABUS BY THE COURT

A journal entry of judgment may be corrected at any time by a nunc pro tunc order, which is appropriate for correcting arithmetic or clerical errors arising from oversight or omission. If there is no arithmetic or clerical error arising from oversight or omission, a nunc pro tunc order is not appropriate.

Appeal from Wyandotte District Court; WESLEY K. GRIFFIN, judge. Opinion filed March 10, 2023. Affirmed.

*Joseph A. Desch*, of Law Office of Joseph A. Desch, of Topeka, was on the brief for appellant.

*Kayla Roehler*, deputy district attorney, *Mark A. Dupree Sr.*, district attorney, and *Derek Schmidt*, attorney general, were on the brief for appellee.

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<sup>1</sup>**REPORTER'S NOTE:** Opinion No. 125,505 was corrected to add the syllabus paragraph. No other revisions have been made.

The opinion of the court was delivered by

STANDRIDGE, J.: In 1992, Nathaniel Turner III pled no contest to multiple felonies in three separate cases. He currently is serving an aggregated sentence of 80 years to life in prison. In the years following his convictions, Turner unsuccessfully challenged his sentence in various ways. In his most recent challenge, Turner moved for an order nunc pro tunc to correct his sentencing journal entries, claiming they are at odds with the actual sentence he is serving. He argued the journal entries should be amended to reflect either (1) the individual sentences imposed by the district court or (2) an aggregated sentence imposed by the court rather than the Kansas Department of Corrections (KDOC). After the district court denied Turner's motion, he directly appealed to this court.

Nunc pro tunc orders are used to correct arithmetic or clerical errors. The Court of Appeals previously affirmed the KDOC's calculation of Turner's 80-years-to-life aggregated sentence. Since the KDOC's calculation of his aggregate sentence reflects the sentence imposed by the district court, there is no arithmetic or clerical error to correct. Accordingly, we affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

In September 1992, the district court sentenced Turner for eight felony convictions in three cases. In case 92 CR 11, the district court imposed concurrent sentences of 5 to 20 years for one count of robbery and one count of aggravated burglary. In case 92 CR 16, the court imposed four consecutive sentences of 15 years to life for one count of rape, one count of aggravated criminal sodomy, and two counts of aggravated robbery. In case 92 CR 90, the court imposed a sentence of 5 to 20 years for one count of robbery to run concurrent with a sentence of 15 years to life for one count of aggravated robbery. The

court ordered Turner to serve the sentences in each case consecutively. We affirmed Turner's sentences in *State v. Turner*, No. 69,638, unpublished opinion filed April 15, 1994.

In 2011, Turner petitioned for habeas corpus relief under K.S.A. 60-1501. He claimed the KDOC impermissibly aggregated his sentences to a controlling term of 80 years to life with parole eligibility possible after 40 years subject to the amount of good time credits earned. Turner argued he was entitled to a conditional release date. The district court denied Turner's petition, and the Court of Appeals affirmed. See *Turner v. McKune*, No. 108,428, 2013 WL 2936140, at \*1, 4 (Kan. App. 2013) (unpublished opinion).

In 2016, Turner filed a second K.S.A. 60-1501 petition, alleging he was denied due process when the KDOC deprived him of 10 years' presumed earned good time credit in calculating his conditional release date for his sentence in case 92 CR 11. After the district court dismissed the petition, the Court of Appeals affirmed. See *Turner v. State*, No. 118,932, 2019 WL 325218, at \*1, 3 (Kan. App. 2019) (unpublished opinion). Turner unsuccessfully sought relief on these same grounds in the Kansas federal district court. See *Turner v. Peterson*, No. 20-3095-SAC, 2021 WL 699841, at \*1-2 (D. Kan. 2021).

In 2021, Turner filed the motion that is the subject of the present appeal, titled "Request for Nunc Pro Tunc Order to Effectuate Compliance With K.S.A. 22-3426." In the motion, filed in all three cases, Turner claimed his aggregated sentence of 80 years to life differed from the sentence imposed by the district court. As a result, Turner argued the sentencing journal entries did not comply with K.S.A. 2021 Supp. 22-3426 because the KDOC, rather than the court, aggregated his sentence. Turner asked the district court to amend the sentencing journal entries to explicitly reflect the actual sentence imposed.

The district court denied Turner's request for amendment, holding that the sentences reflected in the journal entries were correct and noting the previous decisions that upheld the KDOC's aggregation of Turner's sentence. The court later denied Turner's motion to alter or amend its ruling.

Turner directly appealed the district court's decision in each case to this court. We granted Turner's motion to consolidate the cases for appeal.

Jurisdiction is proper. See K.S.A. 2022 Supp. 22-3601(b)(3) (direct appeals to Supreme Court allowed for life sentence crimes); K.S.A. 60-2101(b) (Supreme Court jurisdiction over direct appeals governed by K.S.A. 2022 Supp. 22-3601).

#### ANALYSIS

Turner argues the district court erred in denying his motion to amend the sentencing journal entries. Turner claims, as he did below, that the KDOC's aggregation of his sentences is at odds with the sentences imposed by the district court. As a result, he asks for a nunc pro tunc order amending the journal entries to accurately reflect the sentence he is serving.

A journal entry of judgment may be corrected at any time by a nunc pro tunc order, which is appropriate for correcting arithmetic or clerical errors arising from oversight or omission. See K.S.A. 2022 Supp. 22-3504(b); *State v. Potts*, 304 Kan. 687, 708, 374 P.3d 639 (2016). Whether a nunc pro tunc order is required here necessarily involves the interpretation of Kansas statutes and administrative regulations. Such interpretation presents a question of law over which appellate courts have unlimited review. *State v. Stoll*, 312 Kan. 726, 736, 480 P.3d 158 (2021).

We begin with a review of the relevant Kansas statutes and administrative regulations. At Turner's sentencing, the district court imposed consecutive indeterminate sentences in each of his three cases. K.S.A. 1991 Supp. 21-4608(6), the statute in effect at the time of Turner's crimes, sets forth the rules for calculating the time to be served on concurrent and consecutive sentences. Applicable here, K.S.A. 1991 Supp. 21-4608(6)(c) provides for the method of calculating the time to be served on multiple consecutive indeterminate sentences:

"When indeterminate terms imposed on the same date are to be served consecutively, the minimum terms are added to arrive at an aggregate minimum to be served equal to the sum of all minimum terms and the maximum terms are added to arrive at an aggregate maximum equal to the sum of all maximum terms."

The KDOC regulations provide additional guidance on this sentence computation, defining "[c]onsecutive sentence" as "a series of two or more sentences imposed by the court in which the minimum terms and the maximum terms, respectively, are to be aggregated." K.A.R. 44-6-101(n) (1992). The KDOC regulations define "[a]ggregated controlling sentence" as

"a controlling sentence composed of two or more sentences. An aggregated controlling sentence has a minimum term consisting of the sum of the minimum terms and a maximum term consisting of the sum of the maximum terms." K.A.R. 44-6-101(j) (1992).

The district court sentenced Turner to the following controlling consecutive sentences: (1) 5 to 20 years in case 92 CR 11, (2) four consecutive terms of 15 years to life in case 92 CR 16, and (3) 15 years to life in case 92 CR 90. The KDOC then applied the law cited above to calculate Turner's aggregated controlling sentence by adding the sum of each minimum term (5+15+15+15+15+15) to arrive at the aggregate minimum

and adding the sum of each maximum term (20 years + 5 life terms) to arrive at the aggregate maximum, a sum of 80 years to life. See K.A.R. 44-6-106(a) (providing KDOC with authority to interpret court documents "to the extent necessary to execute the sentence and commitment").

Turner argues that by calculating his sentence in this way, the KDOC improperly modified his sentence by combining the individual sentences into one, thus creating a higher minimum term for each. Turner suggests that the resulting aggregate sentence violates K.S.A. 2022 Supp. 22-3426(a), which he claims "requires particularity in any given sentence in a single case, and in essence, creates a finality to that sentence." Noting he already has served the minimum terms of some of his individual sentences, as well as the maximum 20-year sentence in case 92 CR 11, Turner complains that the KDOC's aggregation under K.S.A. 1991 Supp. 21-4608(6)(c) "delegitimizes the integrity of the discrete sentence for each case" because it means that no individual sentence is considered served until all three are served. Given this alleged conflict between the sentence imposed by the district court and the KDOC's aggregation of that sentence, Turner seeks clarification of the actual sentence he is serving. To that end, he requests amendment of the sentencing journal entries to reflect the discrete nature of each sentence or, in the alternative, a court-ordered aggregation of his sentences.

Turner's argument, while framed as a request for amendment of the journal entries by nunc pro tunc order, is merely another attempt to challenge the legality of his sentence. The Court of Appeals previously affirmed the KDOC's calculation of Turner's 80-years-to-life aggregated sentence. See *Turner*, 2013 WL 2936140, at \*1, 3-4 (finding Turner's controlling sentence was 80 years to life and holding completion of first sentence did not entitle him to recalculation of sentence term); *Turner*, 2019 WL 325218, at \*3 (same). Thus, it may be considered the law of the case. The law-of-the-case doctrine is "a discretionary policy which expresses the practice of the courts generally to refuse to

reopen a matter already decided, without limiting their power to do so." *State v. Collier*, 263 Kan. 629, Syl. ¶ 2, 952 P.2d 1326 (1998). "Ordinarily, under the law of the case doctrine, once an issue is decided by the court, it should not be relitigated or reconsidered unless it is clearly erroneous or would cause manifest injustice." 263 Kan. 629, Syl. ¶ 3.

The KDOC's aggregation of Turner's sentence is not clearly erroneous. As confirmed by the Court of Appeals and reviewed in detail above, the KDOC properly calculated Turner's aggregate sentence as 80 years to life, in compliance with the relevant statutory and regulatory authority. And contrary to Turner's reading of K.S.A. 2022 Supp. 22-3426(a), there is no conflict with K.S.A. 1991 Supp. 21-4608(6)(c). K.S.A. 2022 Supp. 22-3426(a) addresses the record of a district court's judgment or sentence and sets forth the requirements for the form and content of the court's journal entry. It does not apply to the KDOC's aggregation of Turner's sentence. Turner makes no manifest injustice argument, and, given the KDOC's proper aggregation of his sentence, none exists.

The KDOC's calculation of Turner's aggregate sentence reflects the sentence imposed by the district court. As a result, there is no arithmetic or clerical error to correct. See K.S.A. 2022 Supp. 22-3504(b); *Potts*, 304 Kan. at 708. The district court did not err in denying Turner's request for a nunc pro tunc order.

Affirmed.