

NOT DESIGNATED FOR PUBLICATION

No. 125,171

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

EDDIE WAYNE SCOTT,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Harvey District Court; MARILYN M. WILDER, judge. Opinion filed May 19, 2023.  
Sentence vacated and case remanded with directions.

*Kai Tate Mann*, of Kansas Appellate Defender Office, for appellant.

*Kristafer R. Ailsieger*, deputy solicitor general, and *Kris W. Kobach*, attorney general, for appellee.

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

PER CURIAM: Eddie Wayne Scott appeals the sentence imposed after he pled guilty to three counts of involuntary manslaughter. Scott argues that his sentence is illegal because at the sentencing hearing, the trial court announced a statutorily incorrect sentence length. The State concedes that Scott's sentence is illegal. Even though the sentencing journal entry included a statutorily correct sentence length, the sentence imposed at the sentencing hearing controls. We, therefore, vacate Scott's sentence and remand for the trial court to pronounce a legal sentence at a new sentencing hearing.

Scott also argues for the first time on appeal that his constitutional rights were violated by the requirement that he register under the Kansas Offender Registration Act (KORA).

Because we are remanding this matter for a new sentencing hearing, it is unnecessary for us to consider this constitutional issue.

## FACTS

On February 22, 2022, Scott pled guilty to three counts of involuntary manslaughter for killing three people in a car accident on March 6, 2020. At the plea hearing, Scott acknowledged that the conviction carried a registration requirement under the KORA. Scott agreed not to file any departure motions and to join the State's sentencing recommendation. The State agreed to dismiss three other counts against Scott, to not file any departure motions, and to recommend the mid number in the sentencing grid with the sentences to run concurrent.

At the sentencing hearing, the trial court told Scott that his presumptive sentence for a severity level person 5 felony with a criminal history score of E was 46, 49, or 51 months. But when imposing Scott's sentence for that count, the trial court stated it was sentencing Scott "to the aggravated term of 61 months in the custody of Secretary of Corrections." The court then imposed consecutive aggravated sentences of 34 months of prison for the other two counts. The trial court also told Scott that he had an obligation to register under the KORA for 15 years after he was released from prison.

When the trial court filed the journal entry of sentencing, however, it showed that Scott was sentenced to 51 months of imprisonment for the first count and consecutive 34-month prison terms for the other two counts. The total sentence imposed in the journal entry was 102 months in prison—or double the 51-month base sentence as required by K.S.A. 2019 Supp. 21-6819(b)(4). The journal entry included the order that Scott register as a violent offender for 15 years after his release from the sentence.

Scott timely appeals.

#### ANALYSIS

Scott argues that the trial court imposed an illegal sentence. Whether a sentence is illegal under K.S.A. 2022 Supp. 22-3504 is a question of law over which this court has unlimited review. *State v. Mitchell*, 315 Kan. 156, 158, 505 P.3d 739 (2022). Although Scott did not raise this issue before the trial court, a court may correct an illegal sentence at any time while the defendant is serving the sentence, and a defendant may challenge a sentence as illegal for the first time on appeal. See K.S.A. 2022 Supp. 22-3504(a); *State v. Hambright*, 310 Kan. 408, 411, 447 P.3d 972 (2019).

A sentence is illegal if it "does not conform to the applicable statutory provision, either in character or punishment." K.S.A. 2022 Supp. 22-3504(c)(1). A sentence is effective when pronounced from the bench, and the judgment does not gain effectiveness from the sentencing journal entry. The journal entry merely records the sentence, so if there is a discrepancy between the pronounced sentence and the journal entry, the pronounced sentence controls. *State v. Juliano*, 315 Kan. 76, 84, 504 P.3d 399 (2022).

At the sentencing hearing, the trial court ordered Scott to serve 61 months in prison for the first count of involuntary manslaughter, but the sentencing grid for this severity level 5 felony with a criminal history score of E only allowed the trial court to sentence him to either 46, 49, or 51 months. K.S.A. 2022 Supp. 21-6804(a). Scott acknowledges that the sentencing journal entry imposed a legal 51-month sentence, but he argues that the sentence announced at the sentencing hearing is illegal regardless of what sentence the trial court might have intended to impose.

The State concedes that the sentence pronounced at the sentencing hearing controls, so the trial court imposed an illegal sentence. The State also points out that the

trial court failed to announce a total controlling sentence at the sentencing hearing, which another panel of this court found to constitute an illegal sentence in *State v. Gadbury*, No. 102,024, 2011 WL 135019, at \*15 (Kan. App. 2011) (unpublished opinion). The *Gadbury* panel determined that the trial court had failed to impose a complete sentence by specifying how the double limit rule of K.S.A. 21-4720(b)(4), now K.S.A. 2022 Supp. 21-6819(b)(4), applied to the sentence in that case and suggested that the trial court should do so on remand. 2011 WL 135019, at \*15.

Because the trial court imposed an illegal sentence at the sentencing hearing, we vacate Scott's sentence and remand for a new sentencing hearing.

Sentence vacated and case remanded with directions.