

No. 15-113991-A

**IN THE
COURT OF APPEALS OF THE
STATE OF KANSAS**

STATE OF KANSAS
Plaintiff-Appellee

vs.

ANGEL UNRUH
Defendant-Appellant

BRIEF OF APPELLANT

Appeal from the District Court of Saline County, Kansas
Honorable Jared Johnson, Judge
District Court Case No. 14 CR 1151

Ryan Eddinger, #22493
Kansas Appellate Defender Office
Jayhawk Tower
700 Jackson, Suite 900
Topeka, Kansas 66603
(785) 296-5484
(785) 296-2869 Fax
adoservice@sbids.org
Attorney for the Appellant

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Nature of the Case

Angel Unruh pleaded no contest to a single count of possession of methamphetamine. The district court sentenced Ms. Unruh to controlling term of 30 months imprisonment, consecutive to an earlier case, but granted probation for a term of 18 months. Ms. Unruh subsequently filed a motion objecting to the application of jail credit to the earlier case. The district court denied the motion. Ms. Unruh now appeals from the denial of her motion to apply jail credit to the present case.

Statement of the Issues

Issue #1 **The trial court erred in denying Ms. Unruh's motion for jail credit to be applied to the present case.**

Statement of the Facts

Angel Unruh pleaded no contest to possession of methamphetamine, a severity level five drug felony. (R. VIII, 7.) The trial court found Ms. Unruh's criminal history score to be "C" and imposed a controlling sentence of 30 months imprisonment, consecutive to an earlier case, but granted probation for a term of 18 months with mandatory drug treatment. (R. V, 5, 9-10.) Ms. Unruh subsequently filed a motion objecting to the application of jail credit towards an earlier case rather than the present case. (R. IX, 1-4.) The district court denied the motion ruling that the sentence in the present case was ordered consecutive to the earlier case and she could not receive credit for the present case while she was being held for a post-release violation in the earlier case.

Arguments and Authorities

Issue #1 The trial court erred in denying Ms. Unruh’s motion for jail credit to be applied towards the present case.

Standard of Review

The present issue requires this Court to interpret and apply K.S.A. 2013 Supp. 21-6615. Statutory interpretation is a question of law and this Court’s review is de novo.

State v. Storey, 286 Kan. 7, 9–10, 179 P.3d 1137 (2008).

Analysis

K.S.A. 2013 Supp. 21-6615 states, in relevant part:

“In any criminal action in which the defendant is convicted, the judge, if the judge sentences the defendant to confinement, shall direct that for the purpose of computing defendant’s sentence and parole eligibility and conditional release dates thereunder, that such sentence is to be computed from a date, to be specifically designated by the court in the sentencing order of the journal entry of judgment. Such date shall be established to reflect and shall be computed as an allowance for the time which the defendant has spent incarcerated pending the disposition of the defendant’s case.”

In the present case, Ms. Unruh was being held for a post-release violation caused by her arrest in the present case. (R. V, 9.) The district court imposed the sentence in the present case consecutive to the sentence in the earlier case. (R. IX, 2-4.) Ms. Unruh filed a motion arguing that jail credit should be applied to the present case rather than the earlier case she was being held on for the post-release violation. The district court ruled that because the sentence in the present case was ordered consecutive to the earlier case, Ms. Unruh’s jail credit would be applied to the earlier case rather than the present case.

Because Ms. Unruh was being held for a post-release violation caused by her arrest in the present case, an analogy can be drawn to a situation where a defendant commits a new offense while on probation from an earlier offense. Where a defendant

commits a new offense while on probation from an earlier offense and is held on both the new offense and the pending probation violation, time spent in custody must be applied to the sentence imposed for the new offense. See, *White v. Bruce*, 23 Kan.App.2d 449, 932 P.2d 448, rev. denied 262 Kan. 969 (1997)(holding defendant only entitled to credit towards new sentence for new offense and may not receive credit against prior sentence even though arrested for new offense while still on post-release supervision from prior offense.)

Ms. Unruh was not seeking jail credit to be applied towards multiple sentences. She merely sought the credit to be applied to the present case rather than the earlier case for which she was being held on a post-release violation. Ms. Unruh's situation was therefore distinguishable from cases where a defendant seeks jail credit for multiple cases after receiving consecutive sentences. See, *Worrell v. State*, No. 97,611, Slip Op. at 2, 178 P.3d 688 (2008) (finding jail credit only counted once when sentences run consecutively)(Unpublished Opinion attached.) But see also, *Evans vs. Werholtz*, No.105,696, Slip Op. at 2, 259 P.3d 749 (2011) (holding where concurrent sentences are imposed on different dates for different cases, the longer of the two sentences controls the inmates release date) (Unpublished Opinion attached).

Ms. Unruh was held in custody while she waited for the disposition of the present case. She was not seeking credit in multiple sentences but merely to have the credit applied to the present case rather than the earlier offense. Under the ruling in *White v. Bruce*, 23 Kan.App.2d 449, 932 P.2d 448, rev. denied 262 Kan. 969 (1997), Ms. Unruh's jail credit should have been applied to the present case and not the earlier sentence.

Conclusion

For the reasons stated above, Angel Unruh, respectfully requests that this Court reverse the district court's order denying her motion to have jail credit applied to the sentence in the present case.

Respectfully submitted,

/s/ Ryan Eddinger
Ryan Eddinger, #22493
Kansas Appellate Defender Office
Jayhawk Tower
700 Jackson, Suite 900
Topeka, Kansas 66603
(785) 296-5484
(785) 296-2869 Fax
adoservice@sbids.org
Attorney for Appellant

Certificate of Service

The undersigned hereby certifies that service of the above and foregoing brief was made by mailing two copies, postage prepaid, to Ellen Mitchell, Saline County Attorney, 300 W. Ash, Salina, KS 67401-5040; and by e-mailing a copy to Derek Schmidt, Attorney General, at ksagappealsoffice@ag.ks.gov on the 13th day of November, 2015.

/s/ Ryan Eddinger
Ryan Eddinger, #22493