

FILE

Subject

*Procedure - Criminal
Sentences - General*

Copy to



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

July 31, 1974

Opinion No. 74- 257

The Honorable Michael G. Glover
Representative, 44th District
1308 Summit
Lawrence, Kansas 66044

Dear Mr. Glover:

You ask in your letter of April 22, 1974, whether the provisions of K.S.A. 1973 Supp. 21-4603 are applicable in cases involving persons sentenced to life imprisonment under former statute K.S.A. 21-403 for violation of former statute K.S.A. 21-402, Murder in the Second Degree. We believe your question must be answered in the affirmative.

The pertinent portion of K.S.A. 1973 Supp. 21-4603 is as follows:

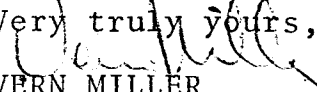
" . . . The court may reduce the minimum term of confinement at any time before the expiration thereof when such reduction is recommended by the secretary of corrections and the court is satisfied that the best interests of the public will not be jeopardized and that the welfare of the prisoner will be served by such reduction. The power here conferred upon the court includes the power to reduce such minimum below the statutory limit on the minimum term prescribed for the crime of which the prisoner has been convicted. The recommendation of the secretary of corrections and the order of reduction shall be made in open court. . . ."
[Emphasis supplied.]

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You make reference in your letter to an Attorney General's opinion dated May 11, 1972, which answers the question of whether the provisions of K.S.A. 1971 Supp. 21-4603 are available to a person serving a life sentence for conviction of a Class A felony where death or life imprisonment are the only sentences that can be imposed. In that opinion the question was answered in the negative because there is no statutory minimum term, and a life sentence is not a definite term of years and thus not susceptible to a reduction under K.S.A. 1973 Supp. 21-4603. We specifically adhere to that opinion at this time in regard solely to Class A felonies.

We feel, however, that a distinction must be drawn between a Class A felony, where there can be no minimum term imposed and those crimes, including Second Degree Murder, where the judge is empowered to impose a minimum term. If a judge initially had the power to place a minimum term of confinement on a defendant, can it logically be argued that later he does not have the power to reduce the term of confinement of a prisoner below the statutory limit on the minimum term prescribed for the crime of which the prisoner has been convicted. We think not.

We believe that the Legislature intended the provisions of K.S.A. 1973 Supp. 21-4603 to be applicable to indeterminate sentences under K.S.A. 1973 Supp. 21-4501(b) through (e). Presently, Second Degree Murder is a Class B felony and carries a sentence under K.S.A. 1973 Supp. 21-4501(b) of a minimum of 5 to 15 years and a maximum of life imprisonment. In view of this intent and the fact that the sentencing court initially had the power to sentence a person convicted of Second Degree Murder, under former K.S.A. 21-402 and 21-403, to a term of imprisonment of not less than 10 years, we believe that the provisions of K.S.A. 1973 Supp. 21-4603 should be applicable to persons convicted of Second Degree Murder and sentenced to life imprisonment under former K.S.A. 21-402 and 21-403.

Very truly yours,

VERN MILLER
Attorney General

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