



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider.
Attorney General

April 5 , 1976

ATTORNEY GENERAL OPINION NO. 76-118

Andrew R. Heyl
Assistant District Attorney
Johnson County Courthouse
P. O. Box 728
Olathe, Kansas 66061

Re: Crimes and Punishments -- Sentencing -- Authority of
a Court to Modify a Sentence.

Synopsis: The 120 day time limitation for modification of a
sentence by the court begins to run from the actual
date of sentencing.

* * *

Dear Mr. Heyl:

You have asked whether the 120 day time limitation granted to a court for modification of a sentence begins to run on the actual date of sentencing or the commencing date recorded in the journal entry of conviction which reflects an allowance for the time which the defendant has spent in jail prior to the disposition of the defendant's case.

K.S.A. 21-4603 provides in pertinent part:

"Any time within one hundred twenty (120) days after a sentence is imposed or within one hundred twenty (120) days after probation has been revoked, the court may modify such sentence or revocation of probation by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits."

Andrew R. Heyl
April 5 , 1976
Page Two

While I agree that K.S.A. 21-4614 does create some question as to when the 120 day period commences, I think the plain meaning of the phrase, "one hundred twenty (120) days after a sentence is imposed," refers to the actual date of sentencing and not the date which reflects an allowance for the time spent in jail prior to sentencing.

The Federal statute, Fed. Rules Cr. Proc. rule 35, 18 U.S.C., contains language similar to the Kansas statute. Rule 35 provides in part, "The court may reduce a sentence within 120 days after the sentence is imposed. . . ." [emphasis supplied]. The time limit described in Rule 35 is deemed to commence on the actual date of sentencing, United States v. Flores, 507 F.2d 229 (1975).

The court's power to modify its sentence is discussed in "Collateral Challenges to Criminal Convictions", Keith G. Meyer and Larry W. Yackle, 21 K.L.R. 259 (1973). The authors impliedly acknowledge that the 120 day limit begins to run on the actual date of sentencing. They state at p. 319, "Inasmuch as the trial judge has 120 days within which to reduce the sentence if he so desires, the notice of appeal must be filed within 130 days of sentencing."

Also, since the defendant has ten days after the expiration of the district court's power to modify the sentence within which to appeal, K.S.A. 22-3608, if the 120 day limit were to begin on the commencing date as described in K.S.A. 21-4614 it is possible to conceive of a situation in which such a construction would deprive the defendant of any time within which to appeal. For example, if, because of the defendant's own motion for a continuance, he remains in the county jail for a period greater than 130 days prior to trial and sentencing, the district court's power to modify the sentence and the time within which to appeal would have expired prior to the time the sentence is imposed. This situation is of course absurd.

Therefore, it is my opinion that the 120 day limit for modification of a sentence by the court described in K.S.A. 21-4603 begins to run from the actual date of sentencing.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:JAW:en

cc: Bernard Dunn, Counsel
Department of Corrections
KPL Towers
Topeka, Kansas