



WITHDRAWN

SEE Opinion No. 88-151A

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL OPINION NO. 88-151

Charles E. Simmons
Chief Legal Counsel
Department of Corrections
Landon State Office Building, Suite 400-N
Topeka, Kansas 66612

Re: Crimes and Punishments -- Kansas Criminal Code --
Classification of Crimes and Penalties --
Conviction for Second and Subsequent Felony
Offenses; Class A Felonies

Synopsis: A sentence of life imprisonment for a class A
felony may not be enhanced under the provisions of
the habitual criminal act. A defendant sentenced
for a class A felony is eligible for parole after
serving 15 years of confinement. Cited herein:
K.S.A. 1987 Supp. 21-4501, as amended by L. 1988,
ch. 115, § 10; 21-4504; 22-3717, as amended by L.
1988, ch. 115, § 1.

* * *

Dear Mr. Simmons:

As Chief Legal Counsel for the Department of Corrections, you
have requested our opinion regarding application of the
habitual criminal act, K.S.A. 1987 Supp. 21-4504.
Specifically, you ask whether application of that statute
increases the length of time a person must serve in order to
achieve parole eligibility if that person is convicted of a
second or subsequent class A felony.

The authorized sentence for a class A felony is life
imprisonment. Other felony penalties are indeterminate,

within the limits fixed by statute. K.S.A. 1987 Supp. 21-4501, as amended by L. 1988, ch. 115, § 10.

Authorized terms of imprisonment may be enhanced upon conviction of second and subsequent felonies pursuant to K.S.A. 1987 Supp. 21-4504, the "habitual criminal act." That section states that by motion of the prosecuting attorney, upon a second felony conviction the court may increase the minimum and maximum terms of imprisonment authorized by K.S.A. 21-4501. Increasing the term of imprisonment is not discretionary if the felony conviction is a third or subsequent conviction.

Statutes relating to habitual criminals are penal in nature and are to be strictly construed. 39 Am. Jur. 2d, Habitual Criminals and Subsequent Offenders, § 4, quoted in State v. Floyd, 218 Kan. 764, 767 (1976). Strict construction means that "ordinary words are to be given their ordinary meaning. Such a statute should not be read to add that which is not readily found therein or to read out what as a matter of ordinary English language is in it." State v. Flummerfelt, 235 Kan. 609, 612 (1984). Applying this rule of construction, we do not believe that a sentence of imprisonment for a class A felony may be enhanced under the provisions of K.S.A. 1987 Supp. 21-4504. As indicated above, the authorized term of imprisonment for a class A felony is life imprisonment. Unlike the indeterminate penalties for other felonies, no minimum and maximum limits are fixed by statute. Rather, the authorized "minimum" and "maximum" term of imprisonment is the defendant's remaining life. To double or triple that term of imprisonment would have no effect. In State v. Pink, 236 Kan. 715 (1985), the court held that the sentence by the trial judge was correctly reflected in the journal entry. The trial court doubled the maximum penalties for each class B sentence pursuant to K.S.A. 21-4504, but did not double the class A penalty "because doubling a life penalty would be an exercise of futility." 236 Kan. at 730. While the trial court's authority to double a life sentence was not at issue, our court did acknowledge the rationale for not doing so.

Eligibility for parole is established by K.S.A. 1987 Supp. 22-3717, as amended by L. 1988, ch. 115, § 1, which states in relevant part:

"(a) Except as otherwise provided by this section, an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618 [mandatory imprisonment for crimes involving firearms] and amendments

thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

"(b) An inmate sentenced for a class A felony, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction for any good time credits."

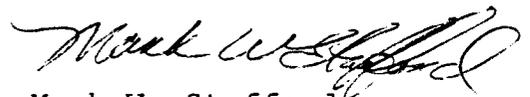
Subsection (f) states that the parole board must hold a hearing for an inmate who achieves parole eligibility.

An argument could be raised that, in light of subsection (b) of K.S.A. 1987 Supp. 22-3717, as amended, a defendant sentenced to life imprisonment is really sentenced to a minimum of 15 years and a maximum of life, and therefore the minimum sentence may be enhanced by the habitual criminal act, doubling or tripling the 15-year minimum. Parole eligibility would then be determined by subsection (a) of K.S.A. 1987 Supp. 22-3717, as amended, resulting in a parole eligibility date of 30 or 45 years after imprisonment. Such a construction of the authorized imprisonment statute would violate the well-established rules of construction, as it requires reading into K.S.A. 1987 Supp. 21-4501(a), as amended, that which is not readily found therein. See Flummerfelt, 235 Kan. at 612.

In conclusion, it is our opinion that a sentence of life imprisonment for a class A felony may not be enhanced under the provisions of the habitual criminal act. A defendant so sentenced is eligible for parole after serving 15 years of confinement.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


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