In re I.A.

Supreme Court of Kansas

July 23, 2021, Opinion Filed

No. 118,802

Reporter
2021 Kan. LEXIS 79 *; 491 P.3d 1241; 2021 WL 3124060

In the Matter of I.A.

Prior History: Review of the judgment of the Court of Appeals in *57 Kan. App. 2d 145, 450 P.3d 347 (2019)* [*1] . Appeal from Johnson District Court; JOHN P. BENNETT, judge.

In re I.A., 57 Kan. App. 2d 145, 450 P.3d 347, 2019 Kan. App. LEXIS 55, 2019 WL 3852437 (Aug. 16, 2019)

Disposition: Judgment of the Court of Appeals dismissing the appeal is affirmed.

Core Terms

right to appeal, juvenile, juvenile offender, inform, rights, sentence, cases, Appeals, appellate court, district court, due process, courts, rooted, adult, conscience, directing, movant, fundamental fairness, criminal defendant, adjudicated, proceedings, deadline, untimely, rests

Case Summary

Overview

HOLDINGS: [1]-The court of appeals did not err in dismissing the appeal for lack of jurisdiction because the lack of a procedural right to have a judge tell appellant of the statutory right to appeal did not offend a fundamental principle of justice; appellant, who was adjudicated as a juvenile offender, did not dispute that his notice of appeal was filed about 19 years after the deadline that applied to his appeal, which was 10 days after entry of sentence.

Outcome

Judgment affirmed.

LexisNexis® Headnotes

Civil Procedure > Appeals > Dismissal of Appeals > Involuntary Dismissals

HN1[] **Dismissal of Appeals, Involuntary Dismissals**

Kansas appellate courts have a duty to question jurisdiction and, in doing so, conduct an unlimited review of any question of law underlying a jurisdiction inquiry. The Kansas Constitution informs that the Kansas Supreme Court has only such appellate jurisdiction as may be provided by law. *Kan. Const. art. 3, § 3*. The Supreme Court therefore must dismiss an appeal if the law does not grant jurisdiction.

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

HN2[] **Procedural Due Process, Scope of Protection**

The Kansas Constitution does not directly grant a right to appeal in any circumstance. Likewise, the right to appeal a state criminal conviction is not a fundamental right guaranteed by the Constitution of the United States or a requisite of due process of law guaranteed to any person by the *Fourteenth Amendment to the United States Constitution*. Nor does the United States Constitution require states to grant juvenile offenders a right to appellate review. That means the right to appeal is not an inherent, natural, inalienable, absolute or vested right. Instead, the right to appeal is a privilege, a

matter of grace which the State can extend or withhold as it deems fit, or which may be granted on such terms and conditions it sees fit.

Civil Procedure > ... > Jurisdiction > Jurisdictional Sources > Statutory Sources

HN3[] Jurisdictional Sources, Statutory Sources

Without a constitutional provision granting the right to appeal, appellate jurisdiction is conferred by statute. That means the person bringing an appeal, that is, the appellant, must satisfy the terms provided by the statute for the appellate court to obtain jurisdiction. Statutes relating to the filing of an appeal, among other requirements, direct an appellant to file an appeal by a specified deadline; not doing so means appellate courts do not obtain jurisdiction.

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

HN4[] Procedural Due Process, Scope of Protection

When considering procedural due process, the Mathews framework requires a balancing of three factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Timing of Appeals

HN5[] Reviewability of Lower Court Decisions, Timing of Appeals

Ortiz recognizes three circumstances in which an appellate court can consider an untimely appeal when a judge: (1) did not inform a defendant of his or her right to appeal; (2) did not provide a defendant an attorney for his or her appeal; or (3) provided an attorney who failed to perfect the appeal.

Constitutional Law > Substantive Due Process > Scope

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

HN6[] Constitutional Law, Substantive Due Process

In Medina, the United States Supreme Court explains that in the field of criminal law, the Court defines the category of infractions that violate "fundamental fairness" very narrowly based on the recognition that, beyond the specific guarantees enumerated in the *Bill of Rights of the United States Constitution*, the Due Process Clause of the United States Constitution has limited operation.

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

HN7[] Procedural Due Process, Scope of Protection

The Patterson framework recognizes that a state has the right to define its criminal procedures and that state-specific rules of criminal procedure do not violate the Due Process Clause of the United States Constitution unless they offend some principle of justice so rooted in the traditions and conscience of the people as to be ranked as fundamental.

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

Constitutional Law > Separation of Powers

HN8[] Procedural Due Process, Scope of Protection

The core test of Patterson applies to any court, federal or state, considering a due process claim under the *Fourteenth Amendment to the United States Constitution*. The core test rests on the precepts of separation of powers and judicial restraint. First, courts

avoid undue interference with considered legislative judgments. Second, courts respect the people's judgment about which rights are a principle of justice so rooted in the traditions and conscience of the people as to be ranked as fundamental. Application of the principles depends not on the circumstance that a federal court is reviewing a state procedure but on recognition of the role of all courts.

Family Law > Family Protection & Welfare > Children > Proceedings

HN9 **Children, Proceedings**

The United States Constitution does not require states to grant a right to appellate review, let alone a right to have a judge inform a juvenile of appellate rights.

Governments > Legislation > Statute of Limitations > Time Limitations

HN10 **Statute of Limitations, Time Limitations**

The first Ortiz exception arises if a district judge fails to abide by one of three statutes: *Kan. Stat. Ann. §§ 22-3210(a)(2)*, *22-3424(f)*, and *22-4505*. The statutes require a judge to inform a criminal defendant that (1) a right to appeal the severity level of the sentence exists; (2) any such appeal must be taken within 10 days; and (3) if the defendant is indigent, an attorney will be appointed for the purpose of taking any desired appeal. The statutes are part of the criminal code of procedure.

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

HN11 **Procedural Due Process, Scope of Protection**

Medina and Patterson make clear courts should not create a procedure in the name of due process. Rather, due process requires courts to enforce rights granted by statute and to remedy statutory violations.

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

HN12 **Procedural Due Process, Scope of Protection**

Kansas appellate courts lack jurisdiction to hear an appeal if a juvenile offender did not follow statutory directives and due process does not require the Kansas Supreme Court to make an exception. A juvenile offender has no statutory or constitutional right to have a district court judge inform him or her of a right to appeal. Thus, due process does not demand that appellate courts extend the deadline for a juvenile offender to file an appeal even if a judge did not mention the right to appeal when adjudicating or sentencing the juvenile.

Syllabus

BY THE COURT

A juvenile offender has no statutory or constitutional right to have a district court judge inform him or her of a right to appeal. Thus, due process does not demand that appellate courts extend the deadline for a juvenile offender to file an appeal even if a judge did not mention the right to appeal when adjudicating or sentencing the juvenile.

Counsel: Michael J. Bartee, of Michael J. Bartee, P.A., of Olathe, argued the cause and was on the briefs for appellant.

Andrew J. Jennings, assistant district attorney, argued the cause, and Stephen M. Howe, district attorney, was with him on the briefs for appellee.

Judges: LUCKERT, C.J. C. WILLIAM OSSMANN, District Judge, assigned.[1]

Opinion by: LUCKERT

Opinion

The opinion of the court was delivered by

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[1] REPORTER'S NOTE: District Judge Ossmann was appointed to hear case No. 118,802 under the authority vested in the Supreme Court by art. 3, § 6(f) of the Kansas Constitution to fill the vacancy on the court by the retirement of Justice Carol A. Beier.

LUCKERT, C.J.: About 19 years after a district court judge adjudicated I.A. as a juvenile offender and sentenced him, I.A. filed this appeal in which he challenges the validity of those proceedings. I.A. recognizes he needed to file a notice of appeal within 10 days of his sentencing and that appellate **[*2]** courts lack jurisdiction over untimely appeals. But he asserts due process and procedural fairness require us to hear his out-of-time appeal. This assertion rests on the proposition that the judge should have informed him of his right to appeal. But no constitutional provision, statute, or decision of this court directs a judge to inform a juvenile offender of the right to appeal. Without a provision to enforce, I.A. must show that the lack of a procedural right to have a judge tell him of the statutory right to appeal offends a fundamental principle of justice—that is, a principle rooted in the traditions and conscience of Kansans. I.A. does not meet this burden, and we dismiss his appeal for lack of jurisdiction.

FACTUAL AND PROCEDURAL BACKGROUND

In 1998, I.A. and some friends randomly shot BB pellets at motorists. I.A. was 17 years old. The State charged I.A. as a juvenile with aggravated battery; the State later amended the complaint to add eight more charges. I.A. eventually agreed to plead guilty to two counts of reckless aggravated battery in exchange for the State's dismissal of the remaining charges.

At a plea hearing, the district court advised I.A. of his rights listed in *K.S.A. 38-1633(b)* **[*3]** . That statute requires a district court to inform a juvenile of certain rights before accepting a plea, including the right to a trial, the right against compelled testimony, and potential sentences. See *In re B.S., 15 Kan. App. 2d 338, 339, 807 P.2d 692 (1991)*. The statute did not, however, require the district court to inform a juvenile of the right to appeal. The district court adjudicated I.A. as a juvenile offender, sentenced him to probation for a year, and ordered restitution. I.A. satisfied the conditions of his probation, and the district court granted his release from its jurisdiction in November 1999.

About 19 years after his sentencing, I.A. filed a pro se request to file a direct appeal out of time. He argued the district court did not tell him of his right to jury trial or obtain a knowing and voluntary waiver of his rights.

The Court of Appeals issued a show cause order directing the parties to explain why the appeal should not be dismissed for lack of jurisdiction because of the untimely notice of appeal. I.A., through court-appointed counsel, argued the judge had not informed I.A. of his right to appeal when it adjudicated him as a juvenile offender. He thus argues his appeal falls under the first exception allowing a late **[*4]** appeal recognized in *State v. Ortiz, 230 Kan. 733, Syl. ¶ 3, 640 P.2d 1255 (1982)*. *Ortiz* held adult criminal defendants could file late appeals in three circumstances; we often call these circumstances the *Ortiz* exceptions. The second and third exceptions are rooted in the right to effective assistance of counsel. *230 Kan. 733, Syl. ¶ 3*. I.A. did not base his arguments on either of those exceptions. Instead, he relies on the first exception. That exception rests on concepts of procedural due process arising from "[t]hree Kansas statutes [that] provide specific procedural safeguards of the right to appeal by certain criminal defendants." *State v. Patton, 287 Kan. 200, 219, 195 P.3d 753 (2008)*. These statutes require district court judges to inform criminal defendants of their right to appeal and their right to have appointed counsel for an appeal. *287 Kan. at 219*.

Because the first *Ortiz* exception applies only if a judge does not follow the directive of these statutes, I.A.'s argument depended on evidentiary proof that the judge had not announced his right to appeal. The Court of Appeals, which does not itself make factual findings, remanded I.A.'s claim to the district court for fact-finding. Back in district court, I.A. asked for a transcript of the plea and sentencing hearing. But the court could not produce a transcript. A court **[*5]** reporter explained that she made a good-faith effort to transcribe the 19-year-old audio cassette tapes used to record the plea hearing but was unable to do so. The district court judge then conducted a hearing after which the judge made a factual finding that the judge adjudicating I.A. as a juvenile offender in 1998 had not advised him of his right to appeal.

With the factual question resolved, the Court of Appeals focused on the legal question of whether a juvenile offender has a right to have a judge announce the right to appeal during a plea or sentencing hearing. It held no such right existed and no other justification extended the deadline for I.A. to bring an appeal. The Court of Appeals thus held it did not have jurisdiction and dismissed the appeal. *In re I.A., 57 Kan. App. 2d 145, 153-54, 450 P.3d 347 (2019)*.

I.A. petitioned for our review of the dismissal. We granted review and now have jurisdiction to consider the legal question decided by the Court of Appeals. See *K.S.A. 20-3018(b)* (allowing petitions for review of Court

of Appeals decisions); K.S.A. 60-2101(b) (extending this court's jurisdiction to review Court of Appeals decisions upon granting petition for review). But we limit our review to that issue because we determine we lack jurisdiction to reach the issues **[*6]** at the heart of I.A.'s appeal—his attack on procedure that led to his adjudication as a juvenile offender.

ANALYSIS

HN1[↑] Kansas appellate courts have a duty to question jurisdiction and, in doing so, conduct an unlimited review of any question of law underlying a jurisdiction inquiry. Kansas Medical Mut. Ins. Co. v. Svaty, 291 Kan. 597, 609-10, 244 P.3d 642 (2010); Patton, 287 Kan. at 205. The Kansas Constitution informs us that this court has only "such appellate jurisdiction as may be provided by law." Kan. Const., art. 3, § 3. We therefore must dismiss an appeal if the law does not grant jurisdiction. Svaty, 291 Kan. at 609-10; Ortiz, 230 Kan. at 735.

HN2[↑] Looking at various sources of that law, the Kansas Constitution does not directly grant a right to appeal in any circumstance. Svaty, 291 Kan. at 609-10. "Likewise, the right to appeal a state criminal conviction is not a fundamental right guaranteed by the Constitution of the United States or a requisite of due process of law guaranteed to any person by the Fourteenth Amendment." Ware v. State, 198 Kan. 523, 525-26, 426 P.2d 78 (1967); see McKane v. Durston, 153 U.S. 684, 687-88, 14 S. Ct. 913, 915, 38 L. Ed. 867 (1894). Nor does the United States Constitution require states to grant juvenile offenders a right to appellate review. In re Gault, 387 U.S. 1, 58, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967) (citing Griffin v. Illinois, 351 U.S. 12, 18, 76 S. Ct. 585, 100 L. Ed. 891 [1956]).

This means the right to appeal "is not an inherent, natural, inalienable, absolute or vested right." Ware, 198 Kan. at 525. Instead, the right to appeal "is a privilege, a matter of grace which the state can extend or withhold as it deems fit, or which may be granted on **[*7]** such terms and conditions it sees fit." 198 Kan. at 526; see McKane, 153 U.S. at 687-88; Svaty, 291 Kan. at 609-10.

HN3[↑] Without a constitutional provision granting the right to appeal, appellate jurisdiction "is conferred by statute." Ware, 198 Kan. at 525. That means the person bringing an appeal—that is, the appellant—must satisfy "the terms provided by the statute" for the appellate court to obtain jurisdiction. 198 Kan. at 525. Statutes relating to the filing of an appeal, among other requirements, direct an appellant to file an appeal by a specified deadline; not doing so means appellate courts do not obtain jurisdiction. Ortiz, 230 Kan. at 735. I.A. does not dispute that his notice of appeal was filed about 19 years after the deadline that applies to his appeal, which was 10 days after entry of sentence. K.S.A. 1998 Supp. 38-1681(b).

Given I.A.'s failure to comply with the statutory requirements under which appellate courts would have jurisdiction, he asks us to carve an alternative route, one not yet recognized for juvenile offenders. He contends we should indefinitely extend the filing deadline because no judge told him of his right to appeal. He rests his argument on procedural due process and fundamental fairness.

In considering this argument, we must first decide on the framework for our analysis. This court and the United States **[*8]** Supreme Court have applied two frameworks or tests—one in civil cases and another in criminal cases—when considering procedural due process. Here, the Court of Appeals used the framework set out by the United States Supreme Court in Mathews v. Eldridge, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), which is primarily applied in civil cases. See Medina v. California, 505 U.S. 437, 443, 112 S. Ct. 2572, 120 L. Ed. 2d 353 (1992). HN4[↑] The *Mathews* framework requires a balancing of three factors:

> "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Mathews, 424 U.S. at 335.

The Court of Appeals did not explain its rationale for applying this balancing test, and neither party discusses which framework should apply here.

The other framework applies mainly in criminal cases and was set out by the United States Supreme Court in Patterson v. New York, 432 U.S. 197, 97 S. Ct. 2319, 53 L. Ed. 2d 281 (1977). I.A.'s arguments suggest this test should apply here because he rests his argument on two criminal cases—Ortiz, 230 Kan. 733, and Patton, 287 Kan. 200. *Ortiz* did not explicitly apply *Patterson*,

but this **[*9]** court later revisited *Ortiz* and, in doing so, applied *Patterson*. Patton, 287 Kan. at 220-21.

Ortiz considered a criminal defendant's argument that this court should hear his out-of-time appeal for reasons of fundamental fairness—he had limited understanding of English and said he did not understand his rights when he signed a waiver. The court disagreed, finding the record did not support his claims and there was no lack of fundamental fairness that would excuse hearing an untimely appeal. 230 Kan. at 736. HN5[↑] *Ortiz*, however, recognized three circumstances in which an appellate court could consider an untimely appeal when a judge: (1) did not inform a defendant of his or her right to appeal; (2) did not provide a defendant an attorney for his or her appeal; or (3) provided an attorney who failed to perfect the appeal. 230 Kan. at 736.

Revisiting this holding in *Patton*, the court took a more in-depth look at the *Ortiz* exceptions. *Patton* said the first *Ortiz* exception hinged on a criminal defendant's right to procedural due process. 287 Kan. at 218-19. Then, *Patton* explored the doctrinal basis for *Ortiz*' holding. In doing so, *Patton* held the analytical approach set out in *Patterson* governed. *Patton* reached this conclusion after discussing Medina, 505 U.S. at 443, which held the balancing **[*10]** test in *Mathews* was not the correct framework for assessing the validity of state procedural rules in criminal cases. Patton, 287 Kan. at 220.

HN6[↑] In *Medina*, the United States Supreme Court explained: "In the field of criminal law, we 'have defined the category of infractions that violate "fundamental fairness" very narrowly' based on the recognition that, '[b]eyond the specific guarantees enumerated in the Bill of Rights, the Due Process Clause has limited operation.'" 505 U.S. at 443 (quoting Dowling v. United States, 493 U.S. 342, 352, 110 S. Ct. 668, 107 L. Ed. 2d 708 [1990]). The Court expressed concern that "the expansion of those constitutional guarantees under the open-ended rubric of the Due Process Clause invites undue interference with both considered legislative judgments and the careful balance that the Constitution strikes between liberty and order." 505 U.S. at 443. The *Patterson* approach balanced these concerns, according to the *Medina* Court. 505 U.S. at 444-46.

HN7[↑] The *Patterson* framework recognizes that a state has the right to define its criminal procedures and that state-specific rules of criminal procedure do not violate the Due Process Clause unless they "offend[] some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." Patterson, 432 U.S. at 201-02. The *Medina* Court reiterated the appropriateness of this test. It directed courts to apply it when examining criminal **[*11]** procedural rules and to refrain from becoming "'a rule-making organ for the promulgation of state rules of criminal procedure.'" Medina, 505 U.S. at 443-44 (quoting Spencer v. Texas, 385 U.S. 554, 564, 87 S. Ct. 648, 17 L. Ed. 2d 606 [1967]).

Considering whether to apply this guidance here, we recognize that *Patterson* and *Medina* partially stem from concepts of federalism and states' rights—concepts relevant in those cases because federal courts were reviewing state judgments. Here, we do not have that circumstance. HN8[↑] Yet the core test of *Patterson* applies to any court—federal or state—considering a due process claim under the Fourteenth Amendment. That core test rests on the precepts of separation of powers and judicial restraint. First, courts avoid "undue interference with . . . considered legislative judgments." Medina, 505 U.S. at 443. Second, courts respect the people's judgment about which rights are a "principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." Patterson, 432 U.S. at 201-02. Application of these principles depends not on the circumstance that a federal court is reviewing a state procedure but on recognition of the role of all courts. And the separation of powers constraint applies no matter if we review proceedings under the revised juvenile justice code or the criminal code. This **[*12]** consideration supports applying *Patterson* here.

Another factor supporting applying *Patterson* today arises from the history of our doing so in Patton, 287 Kan. at 220.

On the other hand, unlike the defendants in Ortiz and Patton, I.A. did not stand before the district court as an adult criminal defendant but as a juvenile offender. And we have not explicitly decided whether the *Patterson* or the *Mathews* framework applies in juvenile offender cases. Although not made here, we can foresee arguments about why *Mathews* should apply, at least in some cases or as to some issues. After all, the Kansas Rules of Civil Procedure govern juvenile appeals. See K.S.A. 1998 Supp. 38-1683(b).

Even so, I.A. argues the juvenile justice system in Kansas mirrors the characteristics of criminal proceedings and juvenile offenders should thus benefit from *Ortiz*. He also urges us to consider juvenile offender cases that, while predating or not citing

Patterson, reflect its framework: *In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)*; *In re Gault, 387 U.S. 1*; and *In re L.M., 286 Kan. 460, 186 P.3d 164 (2008)*. These cases extend various rights recognized in the *Bill of Rights* to juveniles.

In re Winship, 397 U.S. at 367, held constitutional due process rights under the *Fourteenth Amendment* include the requirement of proof of guilt beyond a reasonable doubt and apply to juveniles. And *In re Gault* held the Constitution protects various due process **[*13]** rights of juveniles under the *Fourteenth Amendment*, including the rights to notice of charges, to counsel, and to confront witnesses. *387 U.S. at 32-33, 41, 57*. Neither of these cases said anything about the right to have a judge inform a juvenile of the right to appeal, however. Indeed, as we earlier noted, *In re Gault* reiterated that *HN9*[↑] the United States Constitution does not require states to grant a right to appellate review, let alone a right to have a judge inform the juvenile of appellate rights. *In re Gault, 387 U.S. at 58*. Salient to our point about *Patterson*, both *In re Gault* and *In re Winship* applied rights recognized by the people as core fundamental rights included in our Constitutions. They thus conform to the *Patterson* framework.

So too did *In re L.M., 286 Kan. 460*. There, we held juveniles have a right to a jury trial under the *Sixth Amendment to the United States Constitution*. As I.A. points out, we did so because "the Kansas juvenile justice system has become more akin to an adult criminal prosecution." *In re L.M., 286 Kan. at 470*. Our determination that the *Sixth Amendment* guaranteed juveniles a right to a jury trial equated in the words of *Patterson* to a determination that the right was "so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Patterson, 432 U.S. at 201-02*.

Given the authorities cited by I.A. and the doctrinal applicability of the **[*14]** *Patterson* framework to the issue I.A. presents, we apply *Patterson*'s test today and consider whether notifying a juvenile offender of his or her right to appeal is so rooted in the traditions and conscience of our people that it is properly deemed a fundamental right.

Under that test, I.A.'s argument fails. Unlike *In re Gault*, *In re Winship*, and *In re L.M.* where the *Bill of Rights* included the protected rights, we would have to go beyond the *Bill of Rights* to grant I.A. the right to have a judge tell him he could appeal. No such procedural right is found in either the United States or the Kansas Constitutions. In fact, as we have discussed, the right to appeal cannot be found in either.

Nor does I.A. point us to a statute that grants him a procedural right to have the judge inform him of his right to appeal. This point distinguishes his case from *Ortiz* and *Patton*. In *Patton*, this court emphasized that *Ortiz* "did not endow criminal defendants with any additional constitutional rights. It did not impose affirmative duties on counsel or the court. It did not set up new requirements that must be met to prevent a late appeal. Arguments based on any of these approaches twist its intention and application." *287 Kan. at 217*. Instead, **[*15]** *HN10*[↑] *Ortiz*' first exception arises "if a district judge fails to abide by one of [three] statutes": *K.S.A. 22-3210(a)(2)*, *K.S.A. 22-3424(f)*, and *K.S.A. 22-4505*. *287 Kan. at 220*. These statutes require a judge to inform a criminal defendant that "(1) a right to appeal the severity level of the sentence exists; (2) any such appeal must be taken within 10 days . . .; and (3) if the defendant is indigent, an attorney will be appointed for the purpose of taking any desired appeal." *287 Kan. at 220*. These statutes are part of the criminal code of procedure.

Kansas statutes included no corresponding statutes in the Kansas Juvenile Offenders Code in effect in 1998 when I.A. was in court. *K.S.A. 1998 Supp. 38-1633(b)* list points a court had to review with a juvenile before accepting a plea. These included the right to trial, the right to subpoena witnesses, the right to testify or decline to testify, among others. The statute did not, however, require a court to inform a juvenile of their right to appeal. Once the judge informed the juvenile of these rights, *K.S.A. 1998 Supp. 38-1633(c)* required a court to decide whether a juvenile voluntarily waived the rights before accepting a guilty plea. But, like *subsection (b)*, *subsection (c)* did not reference a need to discuss or make findings about the juvenile's right to appeal.

We would thus have to become "'a rule-making **[*16]** organ for the promulgation of'" rules of juvenile offender procedure if we grant I.A. a right to appeal out of time. *Medina, 505 U.S. at 443-44* (quoting *Spencer, 385 U.S. at 564*). *HN11*[↑] *Medina* and *Patterson* make clear courts should not create a procedure in the name of due process. Rather, due process requires courts to enforce rights granted by statute and to remedy statutory violations. And *Patton, 287 Kan. at 217*, stressed that all this court did in *Ortiz* and *Patton* was enforce a statutory provision; it created no new requirement for judges. I.A.'s argument cannot follow the same path to a remedy because the revised juvenile justice code includes no

comparable statutory provision directing judges to inform offenders of the right to appeal.

Consistent with this conclusion, this court declined to extend *Ortiz* to appeals from K.S.A. 60-1507 motions in *Albright v. State, 292 Kan. 193, 251 P.3d 52 (2011)*, and *Guillory v. State, 285 Kan. 223, 170 P.3d 403 (2007)*. In both cases the court distinguished *Ortiz* because no statute required a judge to notify a movant of the right to appeal. *Albright, 292 Kan. at 202*; *Guillory, 285 Kan. at 228*. Likewise, in *State v. Shelly, 303 Kan. 1027, 1039, 371 P.3d 820 (2016)*, the court held that *Ortiz* and *Patton* did not require a court to inform a defendant of his right to appeal the severity level of his crime because no statute required a court to do so. And in *State v. Hemphill, 286 Kan. 583, 591, 186 P.3d 777 (2008)*, the court held that the first *Ortiz* exception did not apply to an untimely motion to withdraw **[*17]** a plea because there was no statutory obligation for the district court to inform the defendant of his right to appeal the denial of his motion.

In the rare times a court has expanded *Ortiz* beyond criminal proceedings, it has found that a statutory or constitutional right had been denied. In *Brown v. State, 278 Kan. 481, 101 P.3d 1201 (2004)*, a movant filed an out-of-time appeal of the dismissal of his K.S.A. 60-1507 motion because he did not know the judge had appointed counsel, held a hearing, or dismissed his motion. This court said that because a statute granted a right to counsel, the movant necessarily had a statutory right to effective counsel, which had been denied, and the right to effective assistance of counsel is a fundamental right guaranteed in the *Bill of Rights*. The defendant was thus entitled to take an out-of-time appeal under the second and third *Ortiz* exceptions. *278 Kan. at 484-85*. Likewise, while in *Albright* we reaffirmed that a movant under K.S.A. 60-1507 could not invoke *Ortiz*' first exception because no statute directed a court to inform the movant of a right to appeal, the movant had a right to effective assistance of counsel and could invoke *Ortiz*' second and third exceptions. *Albright, 292 Kan. at 202*. *Albright* and *Brown* do not aid I.A., who does not raise those exceptions.

In sum, without **[*18]** specific statutory directives that require a court to inform a juvenile offender of the right to appeal, *Ortiz*' first exception does not apply.

But I.A. also argues that independent of a statutory obligation to inform him of his right to appeal, the concept of fundamental fairness requires us to create a new exception. In doing so, he highlights the parallels between juvenile and criminal prosecutions, the punitive aspects of juvenile proceedings, and general principles of fundamental fairness. He contends that if judges must inform adult criminal defendants of the right to appeal, they should inform juveniles who usually have less knowledge and judgment than that of an adult offender.

I.A. ventures into yet unplowed ground. To date, we have recognized the right to appeal in juvenile cases only when a statute allowed the appeal. For example, we recently recognized an appellate court's jurisdiction over an appeal of a juvenile who was subject to an extended jurisdiction juvenile prosecution. *In re J.P., 311 Kan. 685, 466 P.3d 454 (2020)*. There, a juvenile who was subject to an extended jurisdiction juvenile prosecution appealed revocation of his juvenile sentence and imposition of the adult sentence following violations of the conditions **[*19]** of his release. The State argued that because K.S.A. 2020 Supp. 38-2380(b), which describes orders appealable by a juvenile, does not mention the later imposition of an adult sentence in an extended jurisdiction juvenile proceeding, the appellate court did not have jurisdiction to consider the appeal. This court held that the appellate court had jurisdiction under K.S.A. 2020 Supp. 38-2347(e)(4), which grants juveniles who are subject to extended jurisdiction juvenile prosecutions "all other rights of a defendant pursuant to the Kansas code of criminal procedure." *311 Kan. at 688*. No comparable statute applies here.

In re J.P is again consistent with the *Patterson* test. Like our other decisions cited by I.A. it enforces a right granted by statute and no more. None of the holdings that we have discussed resulted from this court engaging in rulemaking. See *Medina, 505 U.S. at 443-44*. And while I.A. contends we must do so to protect his rights, he does not meet the *Patterson* test because he does not point to "some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Patterson, 432 U.S. at 201-02*. No case he cites suggests that even the right to appeal is fundamental, much less the right to have a judge announce that right to appeal in open court. I.A.'s underlying **[*20]** contention relates to a lack of fairness; he suggests it makes no sense that judges must inform criminal defendants of the right to appeal while no statute tells judges to give the same information to a juvenile offender. In making this argument, he presents a policy decision for the Legislature.

On a final note, if we were to apply *Mathews*, we would agree with the Court of Appeals' analysis.

HN12[↑] In sum, we hold that Kansas appellate courts lack jurisdiction to hear an appeal if a juvenile offender did not follow statutory directives and due process does not require us to make an exception. A juvenile offender has no statutory or constitutional right to have a district court judge inform him or her of a right to appeal. Thus, due process does not demand that appellate courts extend the deadline for a juvenile offender to file an appeal even if a judge did not mention the right to appeal when adjudicating or sentencing the juvenile. This means the Court of Appeals did not err in dismissing I.A.'s appeal for lack of

jurisdiction. We affirm its holding and dismiss this appeal.

C. WILLIAM OSSMANN, District Judge, assigned.[1]

End of Document

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[1] **REPORTER'S NOTE:** District Judge Ossmann was appointed to hear case No. 118,802 under the authority vested in the Supreme Court by *art. 3, § 6(f) of the Kansas Constitution* to fill the vacancy on the court by the retirement of Justice Carol A. Beier.

In re I.A.

Court of Appeals of Kansas

August 16, 2019, Opinion Filed

No. 118,802

Reporter
57 Kan. App. 2d 145 *; 450 P.3d 347 **; 2019 Kan. App. LEXIS 55 ***; 2019 WL 3852437

In the Matter of I.A.

Subsequent History: Affirmed by, Appeal dismissed by *In re I.A., 2021 Kan. LEXIS 79 (Kan., July 23, 2021)*

Prior History: [***1] Appeal from Johnson District Court; JOHN P. BENNETT, judge.

Disposition: Appeal dismissed.

Core Terms

right to appeal, sentenced, district court, juvenile, inform, adjudicated, parties, advise, code of criminal procedure, criminal defendant, pro se, appointed, untimely, juvenile proceeding, juvenile offender, notice of appeal, statutory right, deprivation

Case Summary

Overview
HOLDINGS: [1]-Unlike the statutes in the Kansas Code of Criminal Procedure applicable in adult proceedings, there was no statutory requirement in the revised Kansas Juvenile Justice Code that a court advise a juvenile that he or she had the right to appeal from an order of adjudication or sentencing; [2]-There were no facts presented to establish that the juvenile would qualify for an exception to the 30-day deadline under the Kansas Code of Civil Procedure, and even if there were, his remedy would be limited; [3]-Nothing within the revised Kansas Juvenile Justice Code required the court presiding over a juvenile matter to affirmatively advise the juvenile of the statutory right to appeal an adjudication or sentence.

Outcome
Appeal dismissed.

LexisNexis® Headnotes

Criminal Law & Procedure > Appeals > Appellate Jurisdiction

Governments > Legislation > Interpretation

Criminal Law & Procedure > ... > Standards of Review > De Novo Review > Conclusions of Law

HN1 **Appeals, Appellate Jurisdiction**

The issue of appellate jurisdiction is one of law over which the appellate court has unlimited review. The right to appeal is purely statutory and not a right contained in the United States or Kansas Constitutions. An appellate court has a duty to question jurisdiction on its own initiative. If the record reveals that jurisdiction does not exist, the appeal must be dismissed. To the extent this case requires interpretation of a statute, such an issue also is governed by a de novo standard.

Criminal Law & Procedure > Appeals > Procedural Matters > Time Limitations

HN2 **Procedural Matters, Time Limitations**

Kansas appellate courts have jurisdiction only as provided by law, *Kan. Stat. Ann. § 22-3608*, and an untimely notice of appeal usually leads to dismissal of an action. The Kansas Supreme Court has carved out limited exceptions to this general rule when one of three circumstances exist: (1) a defendant was not informed of his or her rights to appeal, (2) a defendant was not furnished an attorney to exercise those rights, or (3) a

defendant was furnished an attorney for that purpose who then failed to perfect and complete an appeal.

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

HN3[] Procedural Due Process, Scope of Protection

The basic elements of procedural due process are notice and an opportunity to be heard at a meaningful time and in a meaningful manner. In reviewing a procedural due process claim the court must first determine whether a protected liberty or property interest is involved and, if it is, the court must then determine the nature and extent of the process which is due. A due process violation can be established only if the claimant is able to establish that he or she was denied a specific procedural protection to which he or she is entitled. The question of the procedural protection that must accompany a deprivation of a particular property right or liberty interest is resolved by a balancing test, weighing (1) the individual interest at stake, (2) the risk of erroneous deprivation of the interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards, and (3) the State's interest in the procedures used, including the fiscal and administrative burdens that the additional or substitute procedures would entail. The question of what process is due in a given case is a question of law.

Criminal Law & Procedure > Appeals > Procedural Matters > Costs & Attorney Fees

Criminal Law & Procedure > ... > Guilty Pleas > Allocution & Colloquy > Waiver of Defenses

HN4[] Procedural Matters, Costs & Attorney Fees

Three Kansas statutes provide specific procedural safeguards of the right to appeal by certain criminal defendants. First, Kan. Stat. Ann. § 22-3210(a)(2) requires a judge who accepts a felony guilty or nolo contendere plea to inform the defendant of the consequences of the plea. These consequences include waiver of the right to appeal any resulting conviction. Kan. Stat. Ann. § 22-3424(f) instructs that a sentencing judge must inform a defendant who has gone to trial of defendant's right to appeal and of the right of a person who is unable to pay the costs of an appeal to appeal in forma pauperis. The requirements of § 22-3424(f) apply regardless of whether a defendant went to trial and regardless of whether he or she is indigent. Kan. Stat. Ann. § 22-4505 requires the district judge to inform an indigent felony defendant of the right to appeal a conviction and the right to have an attorney appointed and a transcript of the trial record produced for that purpose.

Criminal Law & Procedure > Appeals > Right to Appeal > Defendants

HN5[] Right to Appeal, Defendants

Due process is denied—and an out-of-time appeal may be permissible under the first Ortiz exception—if a district judge fails to abide by one of the statutes, as they have been interpreted by our earlier case law. Thus a district judge must inform a criminal defendant at sentencing, regardless of whether the defendant has entered a plea or gone to trial, that: (1) a right to appeal the severity level of the sentence exists; (2) any such appeal must be taken within 10 days; and (3) if the defendant is indigent, an attorney will be appointed for the purpose of taking any desired appeal.

Criminal Law & Procedure > Juvenile Offenders > Juvenile Proceedings > Appeals

HN6[] Juvenile Proceedings, Appeals

The first Ortiz exception applies where a defendant's failure to timely appeal was caused by the deprivation of a right to which that defendant was entitled by law. But unlike the statutes in the Kansas Code of Criminal Procedure applicable in adult proceedings, there is no statutory requirement in the revised Kansas Juvenile Justice Code that a court advise a juvenile that he or she has the right to appeal from an order of adjudication or sentencing, Kan. Stat. Ann. § 38-2344(b)(1)-(6).

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Timing of Appeals

HN7[] Reviewability of Lower Court Decisions, Timing of Appeals

The relevant statutes specifically mandate that the procedure for an appeal from an order of adjudication or sentencing is governed by the Kansas Code of Civil Procedure, *Kan. Stat. Ann. §§ 38-2380(b)*; 38-2382(c). The statutes within the code of civil procedure address many aspects of an appeal, including when it must be initiated: When an appeal is permitted by law from a district court to an appellate court, the time within which an appeal may be taken shall be 30 days from the entry of the judgment, *Kan. Stat. Ann. § 60-2103(a)*. Although this statute provides a statutory exception to the 30-day timeframe, the exception applies only upon a showing of excusable neglect by the party, in which case the deadline may be extended by 30 days.

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > Appeals

Criminal Law & Procedure > Appeals > Right to Appeal > Defendants

Criminal Law & Procedure > Appeals > Procedural Matters > Costs & Attorney Fees

HN8 **Guilty Pleas, Appeals**

Kan. Stat. Ann. § 22-4505(a) requires that a district court inform a defendant of his or her right to appeal from a conviction and the right to have counsel appointed if the defendant is indigent; *Kan. Stat. Ann. § 22-3424(f)* states that a district court has a duty at sentencing to inform a defendant of the right to appeal from his or her sentence after a jury conviction. There is no similar statutory requirement regarding a post-sentence motion to withdraw a plea.

Criminal Law & Procedure > Juvenile Offenders > Juvenile Proceedings > Appeals

Criminal Law & Procedure > Appeals > Right to Appeal > Defendants

HN9 **Juvenile Proceedings, Appeals**

Unlike the Kansas Code of Criminal Procedure, nothing within the revised Kansas Juvenile Justice Code requires the court presiding over a juvenile matter to affirmatively advise the juvenile of the statutory right to appeal an adjudication or sentence. The juvenile justice code outlines the juvenile process in detail and contains several cross-references to other statutory provisions, including some in the code of criminal procedure. Had the Legislature intended to incorporate the provisions of *Kan. Stat. Ann. § 22-3424(f)* requiring the court to advise a criminal defendant of his or her right to appeal, it would have specifically identified the statute for that purpose.

Criminal Law & Procedure > Juvenile Offenders > Juvenile Proceedings > Appeals

Criminal Law & Procedure > Appeals > Right to Appeal > Defendants

HN10 **Juvenile Proceedings, Appeals**

The right to appeal is purely statutory and is not contained in the United States or Kansas Constitutions. The Kansas Supreme Court has carved out limited exceptions allowing for an untimely notice of appeal in cases that are governed in district court by the Kansas Code of Criminal Procedure. But there is no justification to extend the first Ortiz exception to an appeal of a juvenile offender proceeding under Chapter 38, which is civil in nature and is governed by article 21 of *Chapter 60 of the Kansas Statutes Annotated*, *Kan. Stat. Ann. § 38-2382(c)*.

Syllabus

BY THE COURT

1. The issue of appellate jurisdiction is one of law over which an appellate court has unlimited review. The right to appeal is purely statutory and is not a right contained in the United States or Kansas Constitutions.

2. Kansas appellate courts have jurisdiction only as provided by law, and an untimely notice of appeal usually leads to dismissal of an action.

3. Exceptions to the requirement of a timely filed notice of appeal apply only if a defendant's failure to timely appeal was caused by the deprivation of a right which is provided by law.

4. Nothing within the revised Kansas Juvenile Justice Code requires a district court to affirmatively advise the juvenile of the statutory right to appeal an adjudication or sentence.

5. There is no statutory justification to extend any exceptions to the requirement of a timely filed notice of appeal to a juvenile offender proceeding, which is civil in nature and governed by the Kansas Code of Civil Procedure.

Counsel: Michael J. Bartee, of Michael J. Bartee, P.A., of Olathe, for appellant.

Andrew J. Jennings, assistant district attorney, and Stephen M. Howe, district attorney, **[***2]** for appellee.

Judges: Before STANDRIDGE, P.J., GARDNER, J., and WALKER, S.J.

Opinion by: STANDRIDGE

Opinion

[348] [*145]** STANDRIDGE, J.: I.A. appeals from two 1998 juvenile adjudications for reckless aggravated battery and his sentences of probation and restitution as a result of those adjudications. I.A. argues he is entitled to a new trial because the district court failed to advise him of his right to a trial by jury and failed to obtain a **[*146]** knowing and voluntary waiver of this right. For the reasons stated below, we dismiss appeal for lack of jurisdiction.

FACTS

On August 30, 1998, just a few months before his 18th birthday, I.A. and his friends randomly were shooting BB pellets at people driving in their cars. I.A. originally was charged with one count of aggravated battery. The State later amended the complaint to charge eight additional offenses. The parties eventually entered into a deal where I.A. agreed to plead guilty to two counts of reckless aggravated battery in exchange for the State's dismissal of the remaining seven counts. The court held a plea hearing on November 30, 1998. The district court advised I.A. of the rights enumerated in K.S.A. 38-1633(b). The district court then found a factual basis for I.A.'s guilty pleas and adjudicated **[***3]** I.A. a juvenile offender. The court sentenced I.A. to probation for one year and ordered I.A. to pay $685.55 in restitution. About a year later, the court granted the State's motion for release of jurisdiction, finding that I.A. had satisfied the conditions of his probation and paid the required court costs.

On August 1, 2017, over 18 years after I.A. pled guilty and was sentenced as a juvenile offender, I.A. filed a pro se request to file a direct appeal out of time. In support of this request, I.A. expressed his desire to challenge the district court's failure to advise him of his right to a trial by jury and its failure to **[**349]** obtain a knowing and voluntary waiver of that right. Appellate counsel was appointed.

On February 12, 2018, this court issued a show cause order asking the parties to explain why I.A.'s appeal should not be dismissed for lack of jurisdiction given the 18-year delay between sentencing and appeal. In response to our order, I.A. claimed he had not been informed of his right to appeal when he was adjudicated and sentenced in 1998, which meant that he qualified for an exception to the requirement that a timely notice of appeal be filed. See *State v. Ortiz, 230 Kan. 733, 640 P.2d 1255 (1982)* (late appeal permitted if **[***4]** one of three exceptions applies, first of which is when defendant was not informed of right to appeal). I.A. also noted in his response that a transcript of the plea and sentencing **[*147]** had been requested but had not yet been produced. The court reporter later advised that, notwithstanding her good faith effort to transcribe the 18-year-old audio cassette tapes that were used to record I.A.'s court appearances, the tapes could not be played in a format that would enable the transcript to be produced.

We ultimately remanded the matter to the district court with instructions to hold a hearing and make factual findings with regard to I.A.'s claim that he had not been informed of his right to appeal when he was adjudicated and sentenced in 1998. In addition to these factual findings, we also invited the district court to make legal findings about whether *Ortiz* protections would have applied to I.A. at the time of his adjudication and sentencing.

The district court held the *Ortiz* hearing as planned. The transcript of the *Ortiz* hearing is not included in the record on appeal. After the hearing, however, the district court entered an order finding I.A. had not been informed of his right to appeal **[***5]** after he was adjudicated and sentenced as a juvenile offender in 1998. Relying on the first *Ortiz* exception, the district court granted I.A.'s motion to file his appeal out of time. Perhaps because it was concerned about exceeding the jurisdictional limits of the remand, however, the district court did not answer the underlying legal question of whether any *Ortiz* exception would have applied to I.A. when he was adjudicated and sentenced in 1998.

After the district court issued its order, this court established a briefing schedule and set the matter on its summary calendar for hearing. After reading the briefs submitted by the parties, however, we realized that this appeal could not be resolved without addressing the issue of law that was left unanswered by the district court: whether the first *Ortiz* exception would have applied to I.A. at the time of his juvenile adjudication and sentencing in 1998. Because this is purely a question of law, and one of first impression in Kansas, we sought input from the parties on the legal issue. Accordingly, we ordered the parties to submit supplemental briefs to address the purely legal component of appellate jurisdiction under *Ortiz* presented by **[***6]** the facts of this case: whether *Ortiz* applied to I.A. when he was adjudicated and sentenced. The parties submitted the supplemental briefs as requested, and we are now ready to rule.

[*148] ANALYSIS

Given the procedural posture of this case, we must decide whether we have jurisdiction to consider I.A.'s out-of-time direct appeal. It is only if we have jurisdiction that we can move on to the underlying merits of I.A.'s claim on appeal: that he is entitled to a new trial because the district court failed to advise him of his right to a trial by jury and failed to obtain a knowing and voluntary waiver of this right.

HN1[↑] The issue of appellate jurisdiction is one of law over which this court has unlimited review. *State v. Smith, 304 Kan. 916, 919, 377 P.3d 414 (2016)*. The right to appeal is purely statutory and not a right contained in the United States or Kansas Constitutions. *State v. Ehrlich, 286 Kan. 923, Syl. ¶ 2, 189 P.3d 491 (2008)*. An appellate court has a duty to question jurisdiction on its own initiative. If the record reveals that jurisdiction does not exist, the appeal must be dismissed. *State v. Marinelli, 307 Kan. 768, 769, 415 P.3d 405 (2018)*. To the extent this case requires interpretation of a statute, such an issue also is governed by a de novo standard. *State v. Eddy, 299 Kan. 29, 32, 321 P.3d 12 (2014)*.

[350]** In response to our order requesting the parties to explain why the case should not be dismissed **[***7]** for lack of jurisdiction, I.A. concedes he did not file his appeal within 10 days after entry of sentence as required by the statute. Nevertheless, he claims he was not informed of his right to appeal when he was adjudicated and sentenced in 1998, which meant that he qualified for the first *Ortiz* exception to the requirement that a timely notice of appeal be filed.

The State does not dispute I.A.'s claim that he was not informed of his right to appeal after he was adjudicated and sentenced in 1998. But the State disagrees with I.A.'s contention that the presumed failure of the juvenile court to inform him of his right to appeal qualifies under the first *Ortiz* exception to filing a timely appeal. Specifically, the State argues the *Ortiz* exceptions did not apply to juvenile proceedings in 1998 when I.A. was adjudicated and sentenced; instead, the State argues such protections were limited to adult criminal proceedings.

Given the parties' positions, we must decide as a matter of law whether the first *Ortiz* exception applies to juvenile proceedings. **[*149]** We begin with a brief summary of *Ortiz* and the later cases construing its holding.

HN2[↑] "Kansas appellate courts have jurisdiction only as provided **[***8]** by law, see *K.S.A. 22-3608*, and an untimely notice of appeal usually leads to dismissal of an action." *State v. Patton, 287 Kan. 200, 206, 195 P.3d 753 (2008)*. The Kansas Supreme Court has carved out limited exceptions to this general rule when one of three circumstances exist: (1) a defendant was not informed of his or her rights to appeal, (2) a defendant was not furnished an attorney to exercise those rights, or (3) a defendant was furnished an attorney for that purpose who then failed to perfect and complete an appeal. *Ortiz, 230 Kan. at 735-36*.

Relevant here, the first *Ortiz* exception addresses failures of basic procedural due process. In *Winston v. State Dep't of Soc. & Rehab. Servs., 274 Kan. 396, 49 P.3d 1274 (2002)*, our Supreme Court explained the standard for evaluating a procedural due process claim:

> ***HN3***[↑] "'The basic elements of procedural due process are notice and an opportunity to be heard at a meaningful time and in a meaningful manner. In reviewing a procedural due process claim the court must first determine whether a protected liberty or property interest is involved and, if it is, the court must then determine the nature and extent of the process which is due. A due process violation can be established only if the claimant is able to establish that he or she was denied a specific procedural protection to which he or she is entitled. The question **[***9]** of the procedural protection that must accompany a deprivation of a

particular property right or liberty interest is resolved by a balancing test, weighing (1) the individual interest at stake, (2) the risk of erroneous deprivation of the interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards, and (3) the State's interest in the procedures used, including the fiscal and administrative burdens that the additional or substitute procedures would entail. The question of what process is due in a given case is a question of law. [Citations omitted.]'" *274 Kan. at 409-10*.

In discussing the principles of procedural due process upon which the first *Ortiz* exception is grounded, our Supreme Court held as follows:

> *HN4*[↑] "Three Kansas statutes provide specific procedural safeguards of the right to appeal by certain criminal defendants. First, *K.S.A. 22-3210(a)(2)* requires a judge who accepts a felony guilty or nolo contendere plea to inform the defendant of the 'consequences' of the plea. These consequences include waiver of the right to appeal any resulting conviction. *K.S.A. 22-3424(f)* instructs that a sentencing judge must inform a defendant who has gone to trial of 'defendant's right to appeal' **[***10]** and of the right of a person who is unable to pay the costs of an appeal **[*150]** to appeal *in forma pauperis*. . . . [W]e hold explicitly that the requirements of *K.S.A. 22-3424(f)* apply regardless of whether a defendant went to trial and regardless of whether he or she is indigent. *K.S.A. 22-4505* requires the district judge to inform an indigent felony **[**351]** defendant of the 'right to appeal . . . [a] conviction' and the right to have an attorney appointed and a transcript of the trial record produced for that purpose.
>
> *HN5*[↑] "Due process is denied—and an out-of-time appeal may be permissible under the first *Ortiz* exception—if a district judge fails to abide by one of these statutes, as they have been interpreted by our earlier case law. Thus a district judge must inform a criminal defendant at sentencing, regardless of whether the defendant has entered a plea or gone to trial, that: (1) a right to appeal the severity level of the sentence exists; (2) any such appeal must be taken within 10 days; and (3) if the defendant is indigent, an attorney will be appointed for the purpose of taking any desired appeal. Compare *Fed. R. Crim. P. 32(j)* (allocating to court responsibility to inform criminal defendant of right to appeal). [Citations omitted.]" *Patton, 287 Kan. at 219-20*.

As our Supreme **[***11]** Court has made clear, *HN6*[↑] the first *Ortiz* exception applies where a defendant's failure to timely appeal was caused by the deprivation of a right to which that defendant was entitled by law. I.A. claims he was deprived of his right to be advised by the court that he had a right to appeal. But unlike the statutes in the Kansas Code of Criminal Procedure applicable in adult proceedings, there is no statutory requirement in the revised Kansas Juvenile Justice Code that a court advise a juvenile that he or she has the right to appeal from an order of adjudication or sentencing. See *K.S.A. 2018 Supp. 38-2344(b)(1)-(6)* (before entering plea, court must inform juvenile of nature of charges, presumption of innocence, right to jury trial without unnecessary delay, right to confront and cross-examine witnesses, right to subpoena witnesses, right not to testify, and sentencing alternatives).

In the absence of such a provision, I.A. urges us to apply the Kansas Code of Criminal Procedure to juvenile proceedings. But the plain language of the Kansas Juvenile Justice Code expressly provides otherwise. *HN7*[↑] The relevant statutes specifically mandate that the procedure for an appeal from an order of adjudication or sentencing is governed by **[***12]** the Kansas Code of Civil Procedure. See *K.S.A. 2018 Supp. 38-2380(b)*; *K.S.A. 2018 Supp. 38-2382(c)*. The statutes within the code of civil procedure address many aspects of an appeal, including when it must be initiated: "When an appeal is permitted by law from a district court to an appellate court, the time within which an appeal may be taken shall be 30 **[*151]** days from the entry of the judgment." *K.S.A. 2018 Supp. 60-2103(a)*. Although this statute provides a statutory exception to the 30-day timeframe, the exception applies only "upon a showing of excusable neglect" by the party, in which case the deadline may be extended by 30 days); see also *Board of Sedgwick County Comm'rs v. City of Park City, 293 Kan. 107, 120, 260 P.3d 387 (2011)* (prohibiting courts from using equitable exceptions to jurisdictional requirements such as the "unique circumstances doctrine"). There have been no facts presented here to establish that I.A. would qualify for an exception to the 30-day deadline under the Kansas Code of Civil Procedure. And even if there were, his remedy would be limited to an extension not exceeding 30 days from expiration of the original time deadline. *K.S.A. 2018 Supp. 60-2103(a)*.

Our conclusion in this regard is supported by the analysis conducted by our Supreme Court in *Guillory v. State, 285 Kan. 223, 170 P.3d 403 (2007)*. Guillory pled nolo contendere to first-degree premeditated murder. He was sentenced to life imprisonment. After the **[***13]** time for a direct appeal had run, Guillory filed a pro se motion for relief under *K.S.A. 60-1507*. The court summarily denied the relief Guillory requested in his motion. Guillory later filed an untimely pro se notice of appeal from the summary denial of his *K.S.A. 60-1507* motion. The appellate defender was appointed, and the appeal was docketed.

The Court of Appeals court issued a show cause order asking the parties to explain why the appeal should not be dismissed for lack of jurisdiction given the *60-1507* notice of appeal was not filed within 30 days from the entry of the judgment as required by *K.S.A. 60-2103(a)*. Guillory responded, asserting that his untimely appeal should be permitted as an exception under *Ortiz*, as the district **[**352]** court did not inform him of his right to appeal the decision denying his *60-1507* motion. The Court of Appeals held none of the *Ortiz* exceptions applied and dismissed the appeal. The Supreme Court granted Guillory's petition for review but, like the Court of Appeals, determined it was without jurisdiction to consider the appeal.

> "A fatal flaw in Guillory's argument is that the first *Ortiz* exception, excusing an untimely notice of appeal where the defendant was not informed of the right to appeal, was **[***14]** based on the fact that a criminal defendant has a statutory **[*152]** right to be advised of his or her right to a direct appeal. *K.S.A. 22-3424(f)* requires the sentencing court to inform criminal defendants of the right to appeal. In contrast, there is no statutory requirement that the district court advise a *K.S.A. 60-1507* movant of the right to appeal the decision on his or her motion.
>
> "The fundamental fairness principle underlying all three exceptions recognized in *Ortiz* and its progeny is based on the facts that the defendant's failure to timely appeal was the result of being deprived of a right to which he or she was entitled by law: the statutory right to be advised of the right to appeal; the statutory right to be provided an attorney to file an appeal; or the right to have the appointed attorney perform effectively in perfecting the appeal.
>
> . . . .
>
> "As far as the filing of a timely notice of appeal is concerned, a pro se *K.S.A. 60-1507* movant is in the same position as all other pro se civil litigants and is required to be aware of and follow the rules of procedure that apply to all civil litigants, pro se or represented by counsel. [Citations omitted.]" *Guillory, 285 Kan. at 228-29*.

In addition to *Guillory*, our conclusion that the first *Ortiz* exception does **[***15]** not apply in a juvenile offender case is also supported by *State v. Hemphill, 286 Kan. 583, 591, 186 P.3d 777 (2008)*. In that case, the district court denied Hemphill's postsentence motion to withdraw his no contest pleas. Hemphill filed an untimely appeal from the district court's decision, arguing that he was never informed of his right to appeal from the denial of a motion to withdraw plea and therefore the first *Ortiz* exception should apply to excuse his untimeliness. The Kansas Supreme Court rejected this argument, noting that the district court was under no statutory obligation to inform a defendant of his or her right to appeal the denial of a motion to withdraw plea; thus, the first *Ortiz* exception did not apply in such cases.

> *HN8*[↑] "*K.S.A. 22-4505(a)* requires that a district court inform a defendant of his or her right to appeal *from a conviction* and the right to have counsel appointed if the defendant is indigent; *K.S.A. 22-3424(f)* states that a district court has a duty *at sentencing* to inform a defendant of the right to appeal from his or her sentence after a jury conviction. There is no similar statutory requirement regarding a post-sentence motion to withdraw a plea." *Hemphill, 286 Kan. at 591*.

HN9[↑] Unlike the Kansas Code of Criminal Procedure, nothing within the revised Kansas Juvenile Justice **[***16]** Code requires the court presiding over a juvenile matter to affirmatively advise the juvenile of the statutory right to appeal an adjudication or sentence. The juvenile justice code outlines the juvenile process in detail and contains several cross-references to other statutory provisions, **[*153]** including some in the code of criminal procedure. See *K.S.A. 2018 Supp. 38-2330(f)* (providing that, in certain circumstances, code of criminal procedure relating to appearance bonds and review of conditions and release shall be applicable to appearance bonds in juvenile proceedings); *K.S.A. 2018 Supp. 38-2303(c)* (setting time limits to commence juvenile proceedings for any act committed by juvenile which, if committed by adult, would constitute sexually violent crime as defined in *K.S.A. 2018 Supp. 22-3717*);

K.S.A. 2018 Supp. 38-2389(c)(5) (providing that juvenile is not required to register as offender under Kansas Offender Registration Act, K.S.A. 22-4901, as result of adjudication under this section); K.S.A. 2018 Supp. 38-2356(c) (upon finding by court that juvenile committed offense charged but is not responsible because of mental disease or defect, juvenile shall be **[**353]** committed to state hospital and subject to annual review and potential discharge as provided by K.S.A. 2018 Supp. 22-3428a). Had the Legislature intended to incorporate the provisions of K.S.A. 2018 Supp. 22-3424(f) requiring the court **[***17]** to advise a criminal defendant of his or her right to appeal, it would have specifically identified the statute for that purpose. See State v. Phinney, 280 Kan. 394, 402, 122 P.3d 356 (2005) (requirement that defendant be fully advised of his or her right to appeal under K.S.A. 22-3424[f] is not limited to defendants who are convicted after trial; same rule applies to defendants who plead guilty and forego trial.)

In sum, **HN10**[↑] the right to appeal is purely statutory and is not contained in the United States or Kansas Constitutions. Ehrlich, 286 Kan. 923, 189 P.3d 491, Syl. ¶ 2. Our Supreme Court has carved out limited exceptions allowing for an untimely notice of appeal in cases that are governed in district court by the Kansas Code of Criminal Procedure. See Ortiz, 230 Kan. at 735-36. But we find no justification to extend the first *Ortiz* exception to an appeal of a juvenile offender proceeding under Chapter 38, which is civil in nature and is governed by article 21 of Chapter 60 of the Kansas Statutes Annotated. See K.S.A. 2018 Supp. 38-2382(c). Because the district court was not required by law to advise I.A. of his statutory right to appeal, I.A. does not qualify for a late appeal under the first **[*154]** *Ortiz* exception and we do not have the necessary jurisdiction to consider the underlying merits of the issue he presents on appeal.

Appeal dismissed.

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