

No.

IN THE SUPREME COURT OF THE UNITED STATES

JOSEPH J. CONKLING, Petitioner

v.

STATE OF KANSAS, Respondent

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
KANSAS COURT OF APPEALS**

APPENDIX

- Appendix A - Kansas Supreme Court order denying review in *State v. Conkling*, decided March 28, 2024.
- Appendix B - Kansas Court of Appeals decision affirming Kansas District Court in *State v. Conkling*, decided December 15, 2023.
- Appendix C - Plea Contract and Amended Information filed in *State v. Conkling*, Bourbon County Case No. 21 CR 532.
- Appendix D - Transcript of November 29, 2022, plea hearing in *State v. Conkling*, Bourbon County Case No. 21 CR 532.
- Appendix E - Excerpts of February 6, 2023 sentencing hearing in *State v. Conkling*, Bourbon County Case No. 21 CR 532.

Appendix A

IN THE SUPREME COURT OF THE STATE OF KANSAS

FILED

March 28, 2024

DOUGLAS T. SHIMA
CLERK OF APPELLATE COURTS

ORDER

The court denies all petitions for review filed in the following cases and notes any responses and replies.

No. 125,554, *State of Kansas v. Conner B. Walker*

No. 125,569, *State of Kansas v. Benedict Okwo*

No. 125,884, *State of Kansas v. Samantha Ann Martin*

No. 126,093, *State of Kansas v. Joseph James Conkling*

No. 126,195, *In the Matter of the Marriage of C.A. and M.A.*

Dated this 28th day of March 2024.

FOR THE COURT



MARLA LUCKERT
Chief Justice

Appendix B

No. 126,093

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

JOSEPH JAMES CONKLING,
Appellant.

SYLLABUS BY THE COURT

1.

Whether a district court violated a defendant's constitutional rights under *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), at sentencing raises a question of law subject to unlimited review.

2.

At sentencing, a judge may consider facts reflected in the jury verdict or admitted by the defendant.

3.

Persons sentenced to imprisonment for a sexually violent crime on or after July 1, 2006, when the offender was 18 years of age or older, and who are released from prison, shall be released to a mandatory period of postrelease supervision for the duration of the person's natural life.

Appeal from Bourbon District Court, MARK ALAN WARD, judge. Submitted without oral argument. Opinion filed December 15, 2023. Affirmed.

Samuel Schirer, of Kansas Appellate Defender Office, for appellant.

Brandon D. Cameron, assistant county attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before ARNOLD-BURGER, C.J., SCHROEDER and COBLE, JJ.

SCHROEDER, J.: Following Joseph James Conkling's no-contest plea to one count of rape and one count of aggravated indecent liberties with a child, the district court sentenced him to a total of 226 months in prison and imposed lifetime postrelease supervision. Conkling timely appeals, claiming the district court engaged in unconstitutional judicial fact-finding in violation of *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), to determine he was over 18 years of age at the time of his crimes and impose lifetime postrelease supervision. Conkling admitted he was 40 years old at the time he was charged shortly after the crimes were committed, and he testified under oath he was 41 years old at the time of his sentencing. We find his multiple admissions of his age sufficient to support the district court's finding that Conkling was over the age of 18 when he committed his crimes without engaging in unconstitutional fact-finding in violation of *Apprendi*, and the district court correctly imposed lifetime postrelease supervision at sentencing. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In October 2021, the State charged Conkling with 98 counts of various sex offenses, including 50 counts of rape, 10 counts of aggravated criminal sodomy, 8 counts of aggravated indecent liberties with a child, and 30 counts of sexual exploitation of a child. Conkling pled no contest to one count of rape in violation of K.S.A. 2021 Supp. 21-5503(a)(1)(A) and one count of aggravated indecent liberties with a child who is 14 or more years of age but less than 16 years of age in violation of K.S.A. 2021 Supp. 21-

5506(b)(1). In exchange for Conkling's plea, the State dismissed the remaining charges. The plea agreement stated Conkling could receive up to 36 months' postrelease supervision related to each charge and he understood the district court was not bound by the terms of the plea agreement.

At the plea hearing, Conkling stated he freely and voluntarily signed the plea agreement. The State provided a factual basis for the charges and included information about the victim's age and date of birth but not Conkling's. Conkling agreed the State's factual recitation was the evidence the State would have presented against him. The district court accepted the factual basis and found Conkling guilty of both charges.

At sentencing, the district court imposed consecutive sentences of 165 months' imprisonment for the rape conviction and 61 months' imprisonment for the aggravated indecent liberties with a child conviction and ordered lifetime postrelease supervision.

ANALYSIS

On appeal, Conkling raises only one issue, claiming the district court violated *Apprendi* by engaging in judicial fact-finding to extend his postrelease supervision to a term of life. Conkling specifically argues the district court's determination he was over the age of 18 when he committed his sexually violent crimes was a factual finding in violation of *Apprendi*. Conkling asks us to vacate his lifetime postrelease sentence and remand the case to the district court to impose a postrelease supervision term of 60 months. The State asserts the district court did not violate *Apprendi* by ordering lifetime postrelease supervision and any constitutional error was harmless.

Although Conkling failed to raise the issue before the district court, the parties agree the issue is properly before us as it is purely a legal question that is determinative of the case and concerns fundamental rights. See *State v. Godfrey*, 301 Kan. 1041, 1043,

350 P.3d 1068 (2015). Our appellate courts have addressed the same issue for the first time on appeal on the basis the claim was a purely legal question based on undisputed facts. See *State v. Phillips*, 299 Kan. 479, 493, 325 P.3d 1095 (2014); *State v. Schmeal*, No. 121,221, 2020 WL 3885631, at *8 (Kan. App. 2020) (unpublished opinion). We will address the issue under the same exception.

In *Apprendi*, the United States Supreme Court determined: "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 530 U.S. at 490. But, in *Blakely v. Washington*, 542 U.S. 296, 303, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), the United States Supreme Court noted, for *Apprendi* purposes, a sentencing judge can consider "facts reflected in the jury verdict or admitted by the defendant." Whether a district court violated a defendant's constitutional rights under *Apprendi* at sentencing raises a question of law subject to unlimited review. *State v. Huey*, 306 Kan. 1005, 1009, 399 P.3d 211 (2017).

K.S.A. 2022 Supp. 22-3717(d)(1)(G)(i) states: "[P]ersons sentenced to imprisonment for a sexually violent crime on or after July 1, 2006, when the offender was 18 years of age or older, and who are released from prison, shall be released to a mandatory period of postrelease supervision for the duration of the person's natural life." K.S.A. 2022 Supp. 22-3717(d)(1)(G)(ii) states: "Persons sentenced to imprisonment for a sexually violent crime . . . when the offender was under 18 years of age, and who are released from prison, shall be released to a mandatory period of postrelease supervision for 60 months."

Conkling contends his convictions "did not require proof that he was over the age of 18" when the crimes were committed and a judicial admission regarding his age does not equate to a guilty plea or elemental stipulation. The State responds Conkling filed an application for appointed defense counsel at the beginning of his case stating he was 40

years old, later admitted under oath at his plea hearing he was 41 years old, and submitted a signed petition to enter plea agreement stating he was 41 years old.

Conkling acknowledges other panels of this court have rejected similar arguments. See *State v. Entsminger*, No. 124,800, 2023 WL 2467058, at * 8 (Kan. App. 2023) (unpublished opinion), *petition for rev. filed April 10, 2023*; *State v. Reinert*, No. 123,341, 2022 WL 1051976, at *3 (Kan. App.) (unpublished opinion), *rev. denied* 316 Kan. 762 (2022); *State v. Kewish*, No. 121,793, 2021 WL 4352531, at *4 (Kan. App. 2021) (unpublished opinion); *State v. Haynes*, No. 120,533, 2020 WL 741458, at *2-3 (Kan. App. 2020) (unpublished opinion); *Schmeal*, 2020 WL 3885631, at *8-9; *State v. Zapata*, No. 120,529, 2020 WL 741486, at *8-9 (Kan. App. 2020) (unpublished opinion). While these unpublished opinions are not binding on our decision, we find the analyses set forth therein persuasive.

Conkling's admissions lead us to conclude there is no *Apprendi* violation here. In fact, Conkling's admissions are like those in *Haynes*, where Haynes admitted his age (1) in a financial affidavit he signed and submitted to the district court, (2) in his signed plea document, and (3) at the plea hearing itself. 2020 WL 741458, at *3. Here, Conkling filed an application for appointed defense services in October 2021, stating under penalty of perjury he was born in 1981 and was 40 years old. Conkling also submitted a signed petition to enter plea agreement, which stated: "The Defendant represents to the Court: . . . My true name is: JOSEPH JAMES CONKLING and I am 41 years of age." In the plea agreement, Conkling stipulated sufficient facts existed which, if presented to the fact-finder in a trial, could result in convictions for the offenses charged in the State's amended complaint. At the plea hearing, while under oath, the district court directly asked Conkling how old he was, to which Conkling responded, "41." Conkling also completed his offender registration under the Kansas Offender Registration Act, K.S.A. 2022 Supp. 22-4901 et seq., confirming he was born in January 1981.

The record is clear. By Conkling's own admissions, he was over 18 years old when he committed his crimes. The district court's finding that Conkling was over the age of 18 when he committed his crimes did not violate *Apprendi*. As such, we find it unnecessary to reach the State's alternative argument of harmless error.

Affirmed.

Appendix C

ROBERT E. MYERS
AMY M. ROSS
313 EAST MAPLE
COLUMBUS KS 66725
(620) 429-3151
ATTORNEYS FOR DEFENDANT

IN THE DISTRICT COURT OF BOURBON COUNTY, KANSAS

STATE OF KANSAS)
vs.) Case No. BB 21 CR 532
JOSEPH CONKLING)

PETITION TO ENTER PLEA AGREEMENT

The Defendant represents to the Court:

1. My true name is: **JOSEPH JAMES CONKLING** and I am 21 years of age. I have not completed high school, have not obtained my G.E.D., have not completed 2 years of college. I request that all proceedings against me be in my true name.
2. I am represented by a lawyer, his name is: **ROBERT E. MYERS, 313 E. MAPLE, P.O. BOX 495, COLUMBUS, KANSAS 66725.**
3. I received a copy of the Amended Complaint/Information in case number **BB 21 CR 532** before being called upon to plead. I read the Amended Complaint/Information and have discussed it with my lawyer. I fully understand every charge made against me.
4. I told my lawyer all the facts and circumstances known to me about the charges made against me in the Amended Complaint/Information. I believe that my lawyer if fully informed on

all such matters, and he has counseled and advised me on the nature of each charge and all possible defenses I might have in these cases.

5. I know that the Court must be satisfied that there is a factual basis for a plea of "GUILTY" or "NO CONTEST" before my plea can be accepted. I represent to the Court that the State would be able to produce sufficient facts which when presented to a finder of fact could result in a finding that I did the following acts in connection with the charges made against me in the Amended Complaint/Information in case number **BB 21 CR 532**:

COUNT I

That on or about or between the 1st day of June, 2021, and the 25th day of September, 2021, in Bourbon County, Kansas, JAMES JOSEPH CONKLING, did unlawfully and knowingly have sexual intercourse with SIW (DOB: 2006), which was done without consent of SIW (DOB: 2006) and while she was overcome by force or fear. In violation of K.S.A. 21-5503(a)(1)(A), Rape, a level 1 person felony. (Penalty: from a minimum of 147 months to a maximum of 653 months in prison and a fine of up to \$300,000; Post release supervision term of 36 months).

COUNT II

That on or about the 11th day of August, 2020 and the 25th day of September, 2021, in Bourbon County, Kansas, one JOSEPH JAMES CONKLING, did unlawfully and knowingly have sexual intercourse with SIW (DOB:xx/xx/2006), a child 14 or more years of age, but less than 16 years of age. In violation of K.S.A. 21-5506(b)(1), Aggravated

Indecent Liberties with a Child, a Severity Level 3 Person Felony. (Minimum months 55, maximum months 247).

6. My lawyer has counseled and advised me on the nature of each charge, on all lesser included charges, and on all possible defenses that I might have in the case.

7. I know that I have the right to plead "**NOT GUILTY**" to any offense charged against me. If I plead "**NOT GUILTY**" I know the Constitution guarantees me (a) the right to a speedy and public trial by a jury; (b) at that trial, and at all stages of the proceedings, the right to the assistance of a lawyer; (c) the right to see and hear all witnesses called to testify against me, and the right to cross-examine those witnesses; (d) the right to use the power of process of the Court to compel the production of any evidence, including the attendance of any witnesses in my favor; and (e) the right not to be compelled to incriminate myself by taking the witness stand; and if I do not take the witness stand, no inference of guilt may be drawn from such failure; and (f) the right to take an appeal from any conviction after a contested trial.

8. I know that if I plead "**GUILTY**" or "**NO CONTEST**" I am thereby waiving my right to a trial, and that there will be no further trial of any kind, either before a court or jury; and further, I realize the Court may impose the same punishment as if I had pleaded "**NOT GUILTY**" stood trial, and been convicted by a jury. I further hereby state and declare that I have been informed by my attorney that while I do not have a right to appeal a finding of guilt should I enter a plea of "**GUILTY**" or "**NO CONTEST**" to any charges that I still may retain the right under certain circumstances to appeal any sentence I may receive as a result of my plea of

“**GUILTY**” or “**NO CONTEST**” to any charges. I understand that if I should be convicted after a trial that I would have an absolute right to an appeal and that by pleading “**NO CONTEST**” I am giving up that right. I also understand that by pleading “**NO CONTEST**” I am admitting that I did commit the crime charged in the Information and I am waiving all of the rights set forth herein. In addition, I understand I have a right to appeal any other ruling, including sentencing and any such appeal must be filed within 14 days after sentencing. Failure to file the notice of appeal within 14 days waives my right of appeal. If I cannot afford an attorney for my appeal, I understand one will be appointed for me.

9. I know that if I plead “**GUILTY**” or “**NO CONTEST**,” the Court will ask me questions about the offense(s) to which I have pleaded, and since I will be answering these questions under oath, on the record, and in the presence of my lawyer, that my answers may later be used against me in a prosecution for perjury or false statement.

10. My lawyer informed me that the plea of “**GUILTY**” or “**NO CONTEST**” could subject me to a maximum punishment which, as provided by law, is from **147-653** months incarceration in a state penal institution, **36** months post-release supervision and/or fine of up to **\$300,000** for the offense charged in **Count 1** and **55-247** months incarceration in a state penal institution, **36** months post-release supervision and/or fine of up to **\$300,000** for the offense charged in **Count 2** of the Amended Information/Complaint in case number **BB 21 CR 532**, wherein I am charged with **Rape & Aggravated Indecent Liberties with a Child**. I have also been informed that the Court may order me to make restitution in addition to any other penalty

provided by law.

11. I have been advised and understand that if I am not a U.S. citizen, a conviction of a criminal offense may result in deportation from the United States, exclusion from admission to the United States, and/or denial of naturalization.

12. If I am on felony probation, parole, conditional release, assignment to community corrections, or post release supervision, my status may be revoked and I may be required to serve time in that case which will be consecutive, that is in addition to any sentence imposed upon me in this case. Further, I understand that should my status be any of those stated above in this paragraph and the current crime be one for which the sentence is presumptive probation that the presumption of probation is thereby lost due to the reason of my status of being either on felony probation, parole, conditional release, assignment to community corrections, or post release supervision at the time of the commission of the current offense.

13. I declare that no officer or agent of any branch of government (federal, state or local) has promised, suggested, or predicted that I will receive a lighter sentence, or probation, or any other form of leniency if I plead "**GUILTY**" or "**NO CONTEST**," except as follows: None

(If plea of "**GUILTY**" or "**NO CONTEST**" is the result of the plea agreement, refer to paragraph 15).

If anyone else, including my attorney, made such a promise, suggestion, or prediction, except as noted in the previous sentence, I know that he had no authority to do so.

I know that the sentence I will receive is solely a matter within the control of the Judge

and he is not bound by the terms of any plea agreement in regards to sentencing recommendations.

I hope to receive leniency, but I am prepared to accept my punishment permitted by law which the Court sees fit to impose. However, I respectfully request the Court to consider, in mitigation of punishment, that I have voluntarily entered a plea.

14. I understand that a State probation officer will be assigned to conduct a thorough pre-sentence investigation to develop all relevant facts concerning my case unless the Court finds that there is in the record sufficient information to enable the meaningful exercise of sentencing authority. In determining the sentence to impose, I understand that the Court may take into account all relevant criminal conduct and background characteristics unless otherwise prohibited by law. I further understand that my background characteristics including, but not limited to, the recency and frequency of my prior criminal record, whether or not a substantial portion of my income resulted from criminal conduct, my role in the offense, victim-related circumstances, and my acceptance of the responsibility of the offense, may have specific effect on the sentence.

15. My plea of “**GUILTY**” or “**NO CONTEST**” is the result of a plea agreement entered into between the County Attorney, my attorney, and me. Since my plea of no contest is the result of a plea agreement, I hereby state that the terms of said agreement are as follows:

It is my understanding that the Amended Complaint/Information in the District Court of Bourbon County, Kansas case number **BB 21 CR 532** charging me in **Count 1** carries a potential sentence of **147-653** months incarceration in a state penal institution, **36** months post-release

supervision and/or a fine up to **\$300,000** and **Count 2** carries a potential sentence of **55-247** months incarceration in a state penal institution, **36** months post-release supervision and/or a fine up to **\$300,000**.

Further, it is my understanding that I will enter a plea of no contest to **Counts 1 & 2** in case number **BB 21 CR 532**, and the State will dismiss the remaining counts.

Further, I would state to the Court that I have discussed the Kansas Sentencing Guidelines for Drug and Non-Drug offenses with my attorney as well as my prior criminal history. I additionally State to the Court that I believe that I will be found to be in criminal history category "I" for purposes of sentencing in this matter.

Further at sentencing, I understand that Counts 1 and 2 will run consecutive. *be aggravated and* *run consecutive* *SG*

Knowing all that, it is still my free and voluntary choice to plead "**NO CONTEST**" as stated above.

Further, I understand that I will have to register as an offender for life, as required by K.S.A. 22-4904, *et. seq.*

Additionally, I would state to the Court that my attorney has explained to me that **Count 1** would be designated as the primary offense and therefore **Count 1** would carry the controlling sentence.

Further, it is my understanding that at the time of sentencing the State will not request any fines regarding **Counts 1 & 2**, but will request that I be ordered to pay felony court costs, ~~KBI lab~~ *SG*

e/s
~~fee~~, BIDS application fee and the Court will inquire whether I have the ability to reimburse the State of Kansas for court appointed attorneys fees.

Further, that in the event the State at sentencing makes any arguments contrary to the terms and conditions of this plea agreement as outlined herein, the State hereby stipulates that substantial and compelling reasons exist that the Court allow me to withdraw my plea due to its failure to comply with the terms of this plea agreement.

I fully understand that the Court is not bound by the terms of the plea agreement, and may accept or reject said agreement. If the Court rejects the agreement, I also understand the Court may not give me the opportunity to withdraw my plea of no contest.

16. I believe that my lawyer has done all that anyone could do to counsel and assist me,
AND I AM SATISFIED WITH THE ADVICE AND HELP HE HAS GIVEN ME.

17. I know that the Court will not permit anyone to plead “**GUILTY**” or “**NO CONTEST**” without a sufficient factual basis and I hereby therefore stipulate that sufficient facts exist which if the same were to be presented to a finder of fact in a trial could result in my conviction for the offenses charged in **Counts 1 & 2** of the Amended Complaint/Information in case number **BB 21 CR 532**. With that in mind, I wish to plead “**GUILTY**” or “**NO CONTEST**” and respectfully request the court to accept my plea of “**GUILTY**” or “**NO CONTEST**” and have the clerk enter my plea of “**GUILTY**” or “**NO CONTEST**” as follows: “**GUILTY**” or “**NO CONTEST**” to **Counts 1 & 2** in Case number **BB 21 CR 532** in the **District Court of Bourbon County, Kansas** of the Amended Complaint/Information charging

me with **Rape & Aggravated Indecent Liberties with a Child.**

18. My mind is clear, I am not under the influence of alcohol or drugs, and I am not under a doctor's care. The only drugs, medicine or pills that I took within the past seven (7) days are:

19. I have never been confined in any institution for the treatment of mental illness. I have never been adjudicated mentally incompetent. No psychiatrist, physician, or psychologist has ever found me to be mentally ill. I know of no reason why my mental competence at the time of the commission of the alleged offense(s), or at the present time, should be questioned. (If there are any exceptions to the above statement, explain below.) **THERE ARE NO EXCEPTIONS.**

20. I offer my plea of "**GUILTY**" or "**NO CONTEST**" freely and voluntarily, and further state that my plea of "**GUILTY**" or "**NO CONTEST**" is not the result of any force or threats against me, or of any promises made to me other than those noted in this petition. I further offer my plea of "**GUILTY**" or "**NO CONTEST**" with full understanding of all the matters set forth in the Amended Complaint/Information and in this petition.

21. I waive the formal reading of the Amended Complaint/Information in open court, and I request the Court to enter my plea of "**GUILTY**" or "**NO CONTEST**" as set forth in paragraph (17) in this petition. This written plea agreement accurately states the terms of my agreement with the State. I have no further agreements with the State other than those specifically stated previously in this Petition to Enter Plea Agreement.

22. I have read, understood, and discussed with my attorney each and every part of this Petition to Plead "GUILTY" or "NO CONTEST," and that the answers which appear in every part of this petition are true and correct.

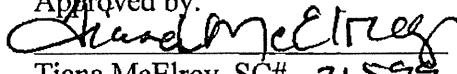
Signed and sworn to by me in open court, in the presence of my attorney this 29 day of November 2022.


JOSEPH JAMES CONKLING

Submitted and Prepared by:

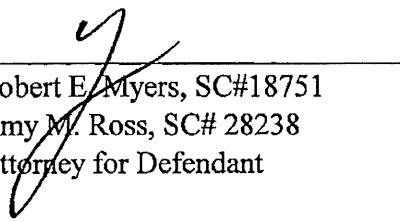
Robert E. Myers, SC#18751
Amy M. Ross, SC# 28238
313 East Maple, P.O. Box 495
Columbus, Kansas 66725
620/429-3151
Fax 429-3146
Attorney for Defendant

Approved by:


Tiana McElroy, SC# 21599
County Attorney

ATTORNEY CERTIFICATION

I, Robert E. Myers, do hereby certify that I personally witnessed my client, JOSEPH JAMES CONKLING, sign this agreement in my presence on the 29 day of November 2022, that he read/understands the entire agreement, and I answered any questions that he may have had prior to signing this agreement.


Robert E. Myers, SC#18751
Amy M. Ross, SC# 28238
Attorney for Defendant

IN THE DISTRICT COURT OF BOURBON COUNTY, KANSAS

STATE OF KANSAS, Plaintiff,)
vs.) Case No: BB-2021-CR-0532
JOSEPH JAMES CONKLING, Defendant.)

AMENDED INFORMATION

I, Tiana M McElroy, the undersigned County Attorney of Bourbon County, Kansas, in the name and by the authority and on behalf of the State of Kansas, come here now and give the Court to understand and be informed that:

COUNT I
RAPE

That on or about the 1st day of June, 2021, and the 25th day of September, 2021, in Bourbon County, Kansas, one JOSEPH JAMES CONKLING, did unlawfully and knowingly have sexual intercourse with SIW (DOB: xx/xx/2006), which was done without the consent of SIW (DOB: xx/xx/2006) and while he/she was overcome by force or fear. In violation of K.S.A. 21-5503(a)(1)(A). Rape, a Severity Level 1 Person Felony. (minimum months 147, maximum months 653) (Fine up to \$300,000.00).

COUNT II

That on or about the 11th day of August, 2020 and the 25th day of September, 2021, in Bourbon County, Kansas, one JOSEPH JAMES CONKLING, did unlawfully and knowingly have sexual intercourse with SIW (DOB: XX/XX/2006), a child 14 or more years of age, but less than 16 years of age. In violation of K.S.A. 21-5506(b)(1), Aggravated Indecent Liberties with a Child, a Severity Level 3 Person Felony. (minimum months 55, maximum months 247).

ENDORSEMENT OF WITNESSES

Officer(s): Officer Derick Burke; Evidence Custodian; Det Lynn Hill; Det Brian Thurston;
Det. Brian Thurston;
Witness(es): Children's Advocacy Center; Sara Louise Conkling; DCF-Department of
Children and Families; Microsoft/Skype; Sarah Poteat;
Victim(s): SIW (DOB: xx/xx/2006);

2021-CR-0532

I declare under penalty that the above and foregoing is true and correct. Executed on
Tuesday, November 29, 2022.

/s/ Tiana M McElroy
Tiana M McElroy, #21599
County Attorney
210 S National Ave., Ste. 22
Fort Scott, KS 66701
(620) 223-2910
Attorney for State.

2021-CR-0532

Appendix D

2023 May 01 AM 7:34

CLERK OF THE BOURBON COUNTY DISTRICT COURT

CASE NUMBER: BB-2021-CR-000532

1 IN THE DISTRICT COURT OF BOURBON COUNTY, KANSAS

24/7 COMPLIANT

2

STATE OF KANSAS,)
3)
4 Plaintiff,)
5 vs.) CASE BB21CR532
6)
7 JOSEPH CONKLING,)
8)
9 Defendant.)
10

11 TRANSCRIPT OF PLEA
12 HEARING

13 PROCEEDINGS had before the Honorable
14 MARK A. WARD, Judge of the District Court
15 of Bourbon County, Kansas, at Fort Scott, Kansas, on
16 the 29th day of November, 2022.

17

18 APPEARANCES:

19 The State of Kansas appearing by and through
20 its counsel, Ms. Tiana M. McElroy, Bourbon County
21 Attorney, 108 West 2nd Street, Fort Scott, KS 66701.

22 The Defendant appearing by and through
23 his counsel, Mr. Robert E. Myers, Attorney at Law,
24 P.O. Box 495, Columbus, KS 66725.

25

1 THE COURT: The case on my docket this afternoon
2 is captioned State of Kansas vs. Joseph Conkling, Case
3 Number 21CR532. The State appears through Bourbon
4 County Attorney, Tiana McElroy. The defendant appears
5 in person and with counsel, Robert Myers.

6 This case is on my docket initially for hearing
7 on pretrial motions. It is scheduled for jury trial
8 here in about a week or two.

9 However, Mr. Conkling, I have been handed a
10 petition to enter plea agreement and an amended
11 information that indicates this afternoon you are
12 going to be pleading -- is it no contest, Mr. Myers?

13 MR. MYERS: It is, Your Honor.

14 THE COURT: Mr. Conkling, you are going to be
15 pleading no contest to the two charges in the amended
16 information charging you in Count 1 with rape in
17 violation of KSA 21-5503 charged as a severity level
18 1, person felony. And to Count 2, aggravated indecent
19 liberties with a child, in violation of KSA 21-5506,
20 charged as a severity level 3, person felony. Is that
21 what you intend to do?

22 THE DEFENDANT: Yes, sir.

1 consequences of a no contest plea and the potential
2 penalties for these two crimes that you are going to
3 be pleading to. Therefore, I am going to be asking
4 you some questions, so I am going to place you under
5 oath. You can remain seated. Raise your right hand
6 the best that you can.

7 Do you solemnly swear the statements you make
8 during the course of this hearing shall be the truth,
9 the whole truth and nothing but the truth, and you
10 further acknowledge and swear that you have read and
11 discussed with your attorney each and every part of
12 the petition to enter plea agreement, and that the
13 answers which appear therein are true and correct, so
14 help you God.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: What is your full legal name, Joseph?

17 THE DEFENDANT: Joseph James Conkling.

18 THE COURT: And how old are you?

19 THE DEFENDANT: 41.

20 THE COURT: How far did you get in school?

21 THE DEFENDANT: I have a high school diploma, sir.

22 THE COURT: So you can read and write and
23 understand the English language?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Your attorney handed me a petition to

1 enter plea agreement that consists of ten pages. On
2 the last page is a signature line for Joseph James
3 Conkling. Mr. Conkling, is that, in fact, your
4 signature?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Before you signed this petition, did
7 you read through it carefully?

8 THE DEFENDANT: With my attorney, yes, sir.

9 THE COURT: With your attorney. And if you had
10 any questions, did you ask your attorney questions
11 about what was in this petition?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And did he answer them to your
14 satisfaction?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Did you sign this petition as your
17 free and voluntary act?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Did you have any questions at all
20 about what is in this petition?

21 THE DEFENDANT: No, sir.

22 THE COURT: As I indicated, I am going to go
23 through some of your basic rights. You have a right
24 to be presumed innocent, you have a right to a speedy
25 and public trial before a jury or the Court.

1 The prosecution must prove each element of each
2 offense charged beyond a reasonable doubt. You have a
3 right to face all of your witnesses. You have a right
4 to ask questions of those witnesses. You have a right
5 to call your own witnesses. You have the right to use
6 the subpoena power of the Court to ensure that your
7 witnesses will appear and testify.

8 You have a right to testify or not to testify,
9 You could not be forced to testify against your own
10 wishes. If you are found guilty of any offense after
11 a trial, you can request a new trial. And if a new
12 trial is not ordered, you have a right to appeal any
13 conviction to a higher Court.

14 Do you understand these basic rights, Mr.
15 Conkling?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand you are going to be
18 waiving these rights if you enter pleas this
19 afternoon?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: The consequences of a no contest plea
22 are there will be no trial to a jury or to the Court,
23 you will be telling me that you are not contesting
24 these two charges in the amended information. The
25 prosecutor will provide me with a summary of the facts

1 and evidence supporting these two charges. You will
2 be giving up any defenses to the charges.

3 If the prosecutor's summary of the facts and
4 evidence support these two charges, the Court will
5 find you guilty the same as if a jury or the Court had
6 done so after a trial. Do you understand the
7 consequences of a no contest plea?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: The penalties for these two crimes
10 that you are pleading to in the amended information,
11 Count 1, charges you with rape. That is charged as a
12 severity level 1, person felony.

13 At time of sentencing, you can receive a sentence
14 of anywhere from a minimum of 147 months to a maximum
15 of 653 months with the Kansas Department of
16 Corrections, and a fine not exceed \$300,000.00.

17 In addition, you are pleading to Count 2
18 aggravated indecent liberties with a child. The
19 penalties for that offense are, at time of sentencing,
20 anywhere from a minimum of 55 months to a maximum of
21 247 months with the Kansas Department of Corrections,
22 and a fine not to exceed \$300,000.00.

23 Do you understand the penalties for these two
24 crimes that you are going to be pleading to this
25 afternoon?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Because you are pleading to two
3 felonies, you won't be sentenced this afternoon. I
4 have to order a presentence investigation report. At
5 time of sentencing, I will know what your criminal
6 history is. I will match up your criminal history on
7 the felony sentencing chart and that tells me what
8 your presumptive sentence is.

9 Has Mr. Myers gone through this chart with you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Because you are pleading to a severity
12 level 1 and a severity level 3, that would be
13 presumptive prison. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you also understand that by
16 pleading to two felonies, the Court has the discretion
17 at time of sentencing of imposing the second
18 conviction consecutive to your sentence in the primary
19 offense, which would be the rape conviction, as
20 opposed to concurrent which means at the same time.

21 Do you understand those differences?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Let me take a look in more detail at
24 the petition to enter plea agreement. According to
25 this petition, Mr. Conkling, it reads that you are

1 entering a plea of no contest to Counts 1 and 2 in
2 this amended complaint and information that we have
3 gone over.

4 The State will dismiss any remaining counts. The
5 petition indicates at sentencing I understand that
6 Counts 1 and 2 will run consecutive. That means one
7 after the other, as I explained. And it indicates it
8 will be the aggravated sentence. Is that correct,
9 counsel?

10 MS. MCELROY: That is correct.

11 MR. MYERS: It is, Your Honor.

12 THE COURT: And you have discussed with your
13 attorney that in the sentencing grids there is a
14 mitigated, there is a standard and there is an
15 aggravated sentence, and he has gone over that with
16 you; is that correct?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And further do you understand you will
19 have to register as an offender under the Kansas
20 Offender Registration Act for life. And you
21 understand that also?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: So is this your understanding of the
24 agreement regarding recommendations at time of
25 sentencing?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand that I am not bound
3 by recommendations at time of sentencing. In other
4 words, I can impose the maximum legal sentences if I
5 feel it is appropriate. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: What is also significant is what your
8 criminal history is found to be at time of sentencing.
9 If it is found to be something different than what you
10 think it is, different than what you told your
11 attorney, your sentence may be affected, but yet you
12 would have no right to withdraw your pleas. Do you
13 understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: With the exception of what is
16 contained in this petition to enter plea agreement,
17 have any promises been made to you to get you to enter
18 into these pleas?

19 THE DEFENDANT: No, sir.

20 THE COURT: Has anyone promised you what your
21 sentence will be at time of sentencing?

22 THE DEFENDANT: No, sir.

23 THE COURT: Have any threats been made to you to
24 force you to enter into these pleas?

25 THE DEFENDANT: No, sir.

1 THE COURT: In other words, you are doing this
2 freely and voluntarily?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You understand the rights that you are
5 waiving in this case, you understand the consequences
6 of your pleas, and you understand the penalties of
7 these two crimes that you are pleading to; is that
8 correct?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Mr. Conkling, do you suffer from any
11 mental or emotional disorder or illness that affects
12 your ability to understand your rights in this case?

13 THE DEFENDANT: No.

14 THE COURT: You are currently on any kind of
15 medications?

16 THE DEFENDANT: No, sir.

17 THE COURT: Have you consumed any alcohol or
18 illegal drugs in the past 72 hours?

19 THE DEFENDANT: No, sir.

20 THE COURT: Have you had sufficient time to
21 discuss this case with your attorney, Mr. Myers, and
22 are you satisfied with his representation?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: In other words, you are of the opinion
25 that your attorney has been fully advised of all of

1 the facts and circumstances in your case, and you are
2 of the opinion he has been both competent and
3 effective in representing you in this case?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you have any questions you want to
6 ask your attorney or the Court before I ask you what
7 your pleas are?

8 THE DEFENDANT: No, sir.

9 THE COURT: Then Mr. Conkling, in the amended
10 information charging you in Count 1 with rape in
11 violation of KSA 21-5503, charged as a severity level
12 1, person felony, how do you plead?

13 THE DEFENDANT: No contest.

14 THE COURT: And to Count 2 in the amended
15 information charging you with aggravated indecent
16 liberties with a child in violation of KSA 21-5506,
17 charged as a severity level 3, person felony, how do
18 you plead?

19 THE DEFENDANT: No contest.

20 THE COURT: State, provide the Court the factual
21 basis to accept the two pleas.

22 MS. MCELROY: Yes, Your Honor. In this case the
23 State's evidence would show that with regard to Count
24 1, between the dates of June 1, 2021, and September
25 25, 2021, at a residence located at 2123 South

1 Margrave Street in Fort Scott, Bourbon County, Kansas,
2 which was a residence that the defendant shared with
3 the minor SIW, with the year of birth 2006, that the
4 defendant told the minor to take off her clothes. She
5 was scared. He told her if she told anyone she would
6 be in big trouble. He then removed her lower clothes
7 so she was nude from the waist down except for socks
8 on her feet and he put his penis into her vagina and
9 had sex with her.

With regard to Count 2, between the dates of
August 11, 2020, and September 25, 2021, at the same
residence, 2123 South Margrave Street, Fort Scott,
Bourbon County, Kansas, the defendant had intercourse
with SIW, who at the time was more than 14 years of
age, but less than 16 years of age.

16 THE COURT: Well, she was 14 or more; correct?

17 MS. MCELROY: Yes, that is correct.

18 THE COURT: Not more than but 14 years old.

19 MS. MCELROY: I am sorry if I said that wrong, she
20 was less than 16 -- she was 15 at the time.

21 THE COURT: Okay.

22 MS. MCELROY: To clarify that.

1 MR. MYERS: Yes, Judge, we believe that is what
2 the State would present.

3 THE COURT: Mr. Conkling, do you agree?

4 THE DEFENDANT: Yes, Your Honor.

25 They are going to have some forms for you to fill

1 out. I am going to direct that you have those forms
2 fully completed within seven days after you receive
3 those forms.

4 In addition, Mr. Conkling, you have now been
5 convicted of an offense as provided by the Kansas
6 Offender Registration Act. So you have three business
7 days to report to the registering law enforcement
8 agency in the county of conviction, and to the
9 registering law enforcement agency in any place where
10 you reside, maintain employment, or attend school.

11 You must complete the registration form with all
12 information and any updated information required for
13 registration as provided by the Kansas Offender
14 Registration Act.

15 Mr. Conkling, the registering agency for Bourbon
16 County, which is your county of conviction, is the
17 Bourbon County Law Enforcement Center. They will
18 assist you in registering you. You will receive a
19 copy of this notice of duty to register there at the
20 jail.

21 I am looking at the registration form itself,
22 and, of course, the address is left blank. I think we
23 normally put in the address for the jail.

24 MR. MYERS: Yes.

25 THE COURT: 293 --

1 MS. MCELROY: East 20th Street.

2 THE COURT: I will insert in the form 293 20th
3 Street, Fort Scott, which is the address for the
4 Bourbon County Law Enforcement Center; is that
5 correct?

6 DEPUTY: 293 East 20th Street, yes.

7 THE COURT: Is the jail. Okay. Now, let's pick
8 out a sentencing date. Make sure a copy gets out to
9 the jail. Where is my calendar? I gave them both
10 back to you this morning and to make sure you return
11 them to the bench. I will go get them.

12 (Pause in proceedings.)

13 THE COURT: Let's go out approximately 60 days.
14 So that is the end of January, first of February.
15 Well, the end of January I am going to have a four-day
16 jury trial in Miami County.

17 Mr. Myers, I am now looking at February 6, that
18 is a Monday in the afternoon.

19 MR. MYERS: I can make that work, Judge.

20 THE COURT: Does that work?

21 MR. MYERS: It does, Your Honor. 1:00 or 1:30?

22 THE COURT: 1:30.

23 MR. MYERS: 1:30.

24 THE COURT: I will schedule sentencing in this
25 case then for Monday afternoon, February 6, at 1:30.

1 I am going to order that the presentence investigation
2 report be completed on or before January 23. Any
3 objections or challenges to a criminal history or
4 motions should be on file on or before -- oh, let's
5 make it February 1. And then sentencing February 6 at
6 1:30. Counsel, anything further?

7 MR. MYERS: No, Your Honor.

8 (Whereupon the proceedings concluded at 2:51
9 p.m., November 29, 2022.)

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C E R T I F I C A T E

2 STATE OF KANSAS))
3 CRAWFORD COUNTY) SS

4 I, Shaun J. Higgins, a Certified Shorthand
5 Reporter, do hereby certify that the foregoing
6 transcript contains all of the proceedings requested
7 to be transcribed; that said transcript is a correct
8 and complete transcription from the official tape
9 recording made at the time of the proceedings as
10 indicated by the files and record of this court.

11 I further certify that said tape recording
12 constituting the official record has been at all times
13 in the custody and under the control of the Bourbon
14 County District Court.

15 Dated at my office in Pittsburg, Kansas,
16 this 1st day of May, 2023.

Appendix E

1 I wasn't allowed to spend anything. During my
2 marriage I bought my wife and her mom flowers for
3 father's day and I got yelled at for it, because that
4 was not money that needed spent at the time. I don't
5 understand why those things were said about me to be
6 this monster everyone is making me out to be, I just
7 want to get help for my mental state. I want to get
8 back into the job force and be a productive part and
9 get myself right. I just want to go home.

10 I am reaching out to you, Your Honor, for a
11 second chance at my life. I will follow every single
12 rule that the Court deems for going through
13 Corrections and seeking the mental help, going by the
14 guidelines. I want to be an advocate for people who
15 have been in my situation and help them through these
16 times.

17 I just want my life back, Your Honor. I have no
18 criminal history. I am not a violent person. I
19 have -- please, sir. I just want to go home to my
20 family, what little bit I have left, pick up the
21 pieces and start my life again.

22 THE COURT: All right. Have a seat, Mr. Conkling.
23 I am sure you are fully aware in discussions with your
24 attorney that the two offenses that you pled to and
25 the Court found you guilty of are presumptive prison

1 sentences.

2 It will be the judgment and sentence of the Court
3 that you be sentenced as follows: For the primary
4 offense of rape, that you be sentenced to the
5 aggravated sentence of 165 months with the Kansas
6 Department of Corrections. For the additional offense
7 of aggravated indecent liberties with a child, it will
8 be the judgment and sentence of the Court that you be
9 sentenced to the aggravated sentencing of 61 months
10 with the Kansas Department of Corrections.

11 That sentence in Count 2 would run consecutive to
12 your sentence in Count 1. You would have a
13 controlling sentence then of 226 months with the
14 Kansas Department of Corrections if my math is
15 correct. Post-release supervision duration by law is
16 lifetime post release.

17 You have previously been given the offender --
18 duty to register as an offender under the Kansas
19 Offender Registration Act. You are by law entitled to
20 credit for jail time towards this sentence. It looks
21 like you were arrested on October 12, 2021.

22 I am going to -- I instruct the Bourbon County
23 Law Enforcement Center to take the DNA sample because
24 the PSI indicates no DNA sample was taken. On the
25 primary offense, you are eligible for maximum good

1 time credit of up to 15 percent as determined by the
2 Department of Corrections. And on the additional
3 offense you are eligible for up to 15 percent of
4 maximum good time credit as determined by the Kansas
5 Department of Corrections.

6 Post release supervision duration on the
7 additional offense is also lifetime post release. The
8 Court is going to assess the Court costs, the DNA
9 database fee, the BIDS application fee, the booking
10 fingerprint fee.

11 The Court will waive your Court appointed
12 attorney fees. These costs and fees that I have
13 assessed will be reduced to a judgment in favor of the
14 State of Kansas, and against the defendant, and are
15 due and owing immediately and will be turned over to
16 collections by the State of Kansas.

17 Mr. Conkling, you have a right to appeal the
18 sentence of the Court, provided you file a notice of
19 appeal within 14 days from today's date. If you
20 cannot afford an attorney, the Court will appoint an
21 attorney to assist you in that appeal. State,
22 anything further?

23 MS. MCELROY: No, Your Honor.

24 THE COURT: Mr. Myers.

25 MR. MYERS: No, Your Honor.