No._____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2026

REGINALD D. CARR, JR.,

Petitioner,

v.

STATE OF KANSAS,

Respondent.

On Petition for a Writ of Certiorari to the Kansas Supreme Court

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APPLICATION TO EXTEND THE TIME TO FILE PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE

To the Honorable Neil Gorsuch, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Tenth Circuit:

Petitioner Reginald D. Carr, Jr., a death-sentenced Kansas prisoner, respectfully moves for a 60-day extension of time to file a

petition for a writ of certiorari seeking review of the Kansas Supreme Court's decision in his case. The Kansas Supreme Court's June 26, 2026, opinion, and August 20, 2026, opinion denying rehearing, are attached to this application. This application is being filed more than 10 days before the current certiorari deadline of November 18, 2026. See Rules 13.1, 13.3, 13.5. This Court has jurisdiction to grant certiorari under 28 U.S.C. § 1257(a).

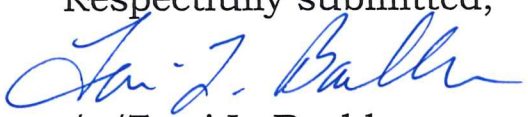
Petitioner has good cause to support this request, which is based on counsel's attempt to procure outside counsel for Mr. Carr's certiorari petition as was necessary for the oral argument before the Kansas Supreme Court. Recently, undersigned counsel was hired to replenish a woefully understaffed capital habeas office and is hiring new attorneys to assist. Counsel is the only member of the Supreme Court Bar in the office and has not had sufficient time to learn a case as complex as Mr. Carr's.

Arrangements are being finalized to hire the same counsel, who was previously involved in Mr. Carr's state court oral argument to prepare this petition. These arrangements are not yet final, but we hope to have counsel in the next couple of weeks.

Due to these circumstances, additional time is needed to effectively present Mr. Carr's issues to this Court.

Therefore, Petitioner respectfully requests that the Court grant this request and extend the certiorari deadline by 60 days.

Respectfully submitted,



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ATTACHMENTS TO APPLICATION TO EXTEND THE TIME TO FILE PETITIONFOR WRIT OF CERTIORARI

CAPITAL CASE

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IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 127,774

STATE OF KANSAS, *Appellee*, v. JONATHAN D. CARR, *Appellant*.

No. 127,850

STATE OF KANSAS, *Appellee*, v. REGINALD D. CARR JR., *Appellant*.

SYLLABUS BY THE COURT

1.

When an appellate court remands a case to the district court, the mandate rule prevents the district court from ruling on an issue that has already been finally settled on appeal. Under this rule, a district court still has authority to address any outstanding issues not resolved on appeal. But this authority is not a license to address new legal issues raised after the mandate has issued.

2.

When a defendant is convicted of a crime based on alternative counts, the alternative counts merge into a single conviction. Once the counts merge, the sentencing court should impose a single sentence for the merged conviction.

3.

The Kansas Supreme Court has statutory authority to notice unassigned errors in the direct appeal of a capital-murder conviction. But this authority does not allow the court to notice unassigned errors after it issues the mandate in the direct appeal.

4.

When an appellate court reverses a conviction in a multiple-conviction case, the Kansas Sentencing Guidelines Act contemplates resentencing if the reversed conviction was identified as the primary crime for sentencing purposes.

Appeal from Sedgwick District Court; JEFFREY GOERING, judge. Oral argument held January 28, 2026. Opinion filed June 26, 2026. Affirmed.

Mark Henricksen, pro hac vice, of Henricksen & Henricksen Lawyers, Inc., of Oklahoma City, Oklahoma, argued the cause, and *Jason W. Belveal*, of Belveal Law Office, of Holton, was with him on the briefs for appellant Jonathan D. Carr.

Brian M. Pomerantz, pro hac vice, of Carrboro, North Carolina, argued the cause, and *Paul R. Oller*, of Kansas Capital Habeas Defender Office, was on the briefs for appellant Reginald D. Carr Jr.

Boyd K. Isherwood, deputy district attorney, argued the cause, and *Marc Bennett*, district attorney, and *Kris W. Kobach*, attorney general, were with him on the briefs for appellee.

The opinion of the court was delivered by

WALL, J.: Reginald D. Carr Jr.'s and Jonathan D. Carr's capital murder cases come before this court for a third time. Though they filed separate appeals, we previously consolidated them under Supreme Court Rule 2.06 (2026 Kan. S. Ct. R. at 19).

This third appeal arises from the Carr brothers' pursuit of a new sentencing hearing. The district court denied their request. Reginald and Jonathan Carr now argue that the district court erred because the mandates from their direct appeals failed to resolve several outstanding sentencing issues. We disagree.

The mandates reflect a final appellate judgment affirming their death sentences and leave no unresolved sentencing issues. We thus affirm the district court's order.

FACTS AND PROCEDURAL BACKGROUND

In our *R. Carr I* opinion, we recounted the details of the crimes R. Carr and J. Carr perpetrated in Wichita. See *State v. Carr*, 300 Kan. 1, 17-43, 331 P.3d 544 (2014) (*R. Carr I*), *rev'd and remanded sub nom. Kansas v. Carr*, 577 U.S. 108, 136 S. Ct. 633, 193 L. Ed. 2d 535 (2016). The "Carrs' notorious Wichita crime spree culminated in the brutal rape, robbery, kidnapping, and execution-style shooting of five young men and women." *Carr*, 577 U.S. at 111. The enormity and scale of these crimes resulted in myriad charges under alternative theories of liability. And the capital-murder counts were no exception.

R. Carr and J. Carr carried out execution-style murders of four young men and women—and the attempted murder of a fifth—after forcing the group to participate in sex acts. Based on this conduct, the State charged each brother with eight counts of capital murder for the killing of four victims. As originally charged, the State tied the killing of each victim to two alternative theories of capital murder.

The first capital-murder theory was based on the intentional and premeditated killing of a rape victim—the sex-crime theory. See K.S.A. 21-5401(a)(4) (formerly cited as K.S.A. 21-3439[a][4] [Torrence 2007]). The alternative capital-murder theory was based on the intentional and premeditated killing of more than one person as a part of the same act or transaction—the multiple-murder theory. See K.S.A. 21-5401(a)(6) (formerly cited as K.S.A. 21-3439[a][6] [Torrence 2007]).

The defendants were tried together in both the guilt and penalty phases. The jury found each brother guilty of all eight capital-murder charges. But the eight counts reflected two *alternative* capital-murder theories for each of the four victims. Thus, the district court could impose a sentence on only four capital-murder convictions.

So when the trial moved to the penalty phase, the court instructed the jury to decide whether a death sentence was appropriate for each of the four capital-murder convictions—one conviction for each capital-murder victim. The jury recommended a death sentence on all four capital-murder convictions for each defendant. And the district court imposed that sentence.

The defendants appealed directly to our court. See *R. Carr I*, 300 Kan. 1; *State v. Carr*, 300 Kan. 340, 329 P.3d 1195 (2014) (*J. Carr I*), *rev'd and remanded sub nom. Carr*, 577 U.S. 108. Our court reversed seven of each defendant's eight capital-murder convictions. See *R. Carr I*, 300 Kan. at 254; *J. Carr I*, 300 Kan. at 367. It reversed the four capital-murder convictions charged under the sex-crime theory because the jury instructions incorrectly referenced the surviving victim rather than the capital-murder victims. It also reversed three of the four capital-murder convictions charged under the multiple-murder theory because they were multiplicitous. See *R. Carr I*, 300 Kan. at 164; *J. Carr I*, 300 Kan. at 367.

After affirming a single capital conviction, *R. Carr I* and *J. Carr I* turned to the death sentences. The court reversed those sentences after concluding that the Eighth Amendment to the United States Constitution required R. Carr and J. Carr to have separate penalty-phase proceedings. *R. Carr I*, 300 Kan. at 315; *J. Carr I*, 300 Kan. at 371. Given that holding, our court did not address the Carr brothers' remaining penalty-phase issues.

But before the matter was remanded to the district court, the United States Supreme Court granted review. It reversed *R. Carr I* and *J. Carr I* after concluding that the Eighth Amendment did not bar the State from conducting joint penalty-phase proceedings. See *Carr*, 577 U.S. at 126.

The Carr brothers made their second appearance in our court on remand from the United States Supreme Court. In *R. Carr II* and *J. Carr II*, we addressed all remaining penalty-phase issues and affirmed each defendant's death sentence for the capital murder of H.M., J.B., B.H., and A.S. See *State v. Carr*, 314 Kan. 615, 730, 502 P.3d 546 (2022) (*R. Carr II*); *State v. Carr*, 314 Kan. 744, 780, 502 P.3d 511 (2022) (*J. Carr II*).

After the mandate issued, both R. Carr and J. Carr filed "Defendant's Motion for Sentencing Hearing." The motions assert—in identical language—that "[t]he *Carr I* holdings—vacating and voiding numerous felony convictions—require a sentencing hearing because a legal sentence for the single capital murder conviction under K.S.A. 21-3439(a)(6) has not been pronounced." Both motions also claim that there was no legal sentence for Count 51—the Linda Ann Walenta felony-murder conviction—because it had been ordered to run "consecutively to counts 1, 3, 5, and 7,"—the capital-murder charges based on the sex-crime theory—which were all vacated in *Carr I*.

The district court held a hearing on the motions and ruled that it lacked jurisdiction to resentence the defendants:

> "Well, it seems to me that, again, what's been troubling me through the arguments this morning and, frankly, as I went through the briefs is that if the Supreme Court had intended that this Court resentence Mr. Jonathan and Reginald Carr on the capital murder conviction, it seems to me that that would have been included clearly in the mandate.
>
> "What we have now is a conviction that has been affirmed by the Supreme Court in both cases, a capital murder sentence that has been affirmed by the Supreme Court in both cases with no direction to the district court to resentence either Jonathan Carr or Reginald Carr on those counts.

"So absent that, I don't think that I have jurisdiction to resentence Mr. Reginald Carr or Jonathan Carr on either case.

"So the motion will be denied."

Both R. Carr and J. Carr appeal the district court's denial of their respective motions for sentencing. They also raise new challenges to their non-capital convictions and sentences for the first time on appeal. We heard oral arguments from the parties on January 28, 2026. And we have jurisdiction because the district court imposed a death sentence. See K.S.A. 21-6619.

ANALYSIS

To fully address the issues raised in this appeal, we divide the opinion into three sections. First, we analyze the scope of the mandates and confirm they left no room to resentence defendants on their capital convictions. Second, we explain why defendants' post-mandate motions are improper vehicles for new legal challenges to their non-capital convictions. Finally, we address J. Carr's illegal-sentence claim and explain why the reversal of several non-capital convictions did not render his sentence illegal.

I. *The mandate rule prevents resentencing on each defendant's capital-murder conviction.*

The central question before us is whether the district court properly dismissed R. Carr's and J. Carr's motions because the mandates left no room to resentence defendants on the sole capital-murder conviction affirmed on appeal. We conclude that it did. To understand why, we first identify the controlling legal standards. Then we define the scope of our mandates and confirm that they foreclosed resentencing.

A. *District courts must follow the mandate of the appellate court.*

By statute, an "appellate court may reverse, affirm or modify the judgment or order appealed from, or may order a new trial in the district court." K.S.A. 22-3605(a).

When an appellate court decision becomes final, the court must transmit to the district-court clerk its mandate, which contains "such directions as are appropriate under the decision." K.S.A. 60-2106(c). A copy of the appellate court's opinion is included with, and constitutes part of, the mandate. "Such mandate and opinion, without further order of the judge, shall thereupon be a part of the judgment of the court if it is determinative of the action, or shall be controlling in the conduct of any further proceedings necessary in the district court." K.S.A. 60-2106(c).

The corollary to K.S.A. 60-2106 is the mandate rule, which "is a statutory imperative that requires lower courts follow the mandates issued by appellate courts." *State v. Cheeks*, 313 Kan. 60, 67, 482 P.3d 1129 (2021); see also K.S.A. 20-108 (appellate court may require district court to "carry the judgment or decree of the appellate court into execution"). The district court "cannot change the mandate, make contrary findings to the ones in the mandate, or further review any issues the mandate finally decided." *Fawcett Trust v. Oil Producers Inc. of Kansas*, 315 Kan. 259, 269-70, 507 P.3d 1124 (2022). And the rule has no recognized exceptions. See 315 Kan. at 269.

The mandate rule prevents district-court action on remand "'when an issue has already been finally settled by earlier proceedings in a case.'" *State v. Smith*, 312 Kan. 876, 884, 482 P.3d 586 (2021) (quoting *State v. Soto*, 310 Kan. 242, 256, 445 P.3d 1161 [2019]). If an issue has been finally settled, "'the district judge is not free to expand upon or revise that history.'" *Smith*, 312 Kan. at 884.

But the rule does not prevent a judge "'from doing whatever else is necessary to dispose of a case,'" including settling other outstanding issues. 312 Kan. at 884. "'Such issues may have been allocated for decision in the district court in the first place and then untouched by appellate proceedings. They may include issues arising from late-breaking facts.'" 312 Kan. at 884. Importantly, the district court's authority to address "outstanding issues" is not a license to address new legal issues raised after the mandate has issued. Cf. *Fawcett Trust*, 315 Kan. at 270 (district court cannot "'unilaterally depart from the mandate, even when a change in the law has occurred'").

While the mandate rule limits a district court's authority, it is not jurisdictional per se. See *Soto*, 310 Kan. at 252 (mandate statutes were designed to enforce hierarchy of Kansas courts, not to set limits on subject matter jurisdiction on remand). But in criminal cases, "[o]nce sentence is pronounced and judgment entered, the district court loses jurisdiction over a criminal case except to correct arithmetic or clerical errors." *State v. Tafoya*, 304 Kan. 663, Syl. ¶ 2, 372 P.3d 1247 (2016). "Thus, on remand from a higher court, absent narrow exceptions, a district court's jurisdiction to resentence or otherwise deviate from an already pronounced sentence is limited to the *express instructions* contained in the higher court's mandate." (Emphasis added.) 304 Kan. 663, Syl. ¶ 3.

Our review is unlimited when we interpret a mandate or decide whether the district court complied with it. *State v. Morningstar*, 299 Kan. 1236, Syl. ¶ 2, 329 P.3d 1093 (2014).

B. *The mandates left no room for resentencing.*

There is a single mandate for each of R. Carr's and J. Carr's cases. Each mandate incorporates three opinions. For R. Carr, it includes our *R. Carr I* and *R. Carr II* opinions and the United States Supreme Court's *Kansas v. Carr* opinion. For J. Carr, it includes our *J. Carr I* and *J. Carr II* opinions and the *Kansas v. Carr* opinion.

R. Carr's and J. Carr's mandates confirm that our court has affirmed a single capital-murder conviction and a single, corresponding death sentence for each defendant. See *R. Carr I*, 300 Kan. at 254 ("we affirm R. Carr's capital murder conviction under Count 2" and "reverse his three remaining capital murder convictions based on the alternative theories under K.S.A. 21-3439[a][4] and [a][6]"); *R. Carr II*, 314 Kan. at 730 ("we affirm Reginald Dexter Carr Jr.'s death sentence for the capital murder of H.M., J.B., B.H., and A.S."); *J. Carr I*, 300 Kan. at 367 (same result as *R. Carr I*); *J. Carr II*, 314 Kan. at 780 (same result as *R. Carr II*). And these mandates are reflected in the appellate history of this case and the relevant appellate holdings.

In *R. Carr I* and *J. Carr I*, our court affirmed one of the eight capital-murder convictions for each defendant. It reversed the four capital-murder convictions charged under the sex-crime theory due to instructional error. *R. Carr I*, 300 Kan. at 161-63. This left four capital-murder convictions charged under the multiple-murder theory. But the State conceded that three of the four convictions were multiplicitous. 300 Kan. at 164.

"[F]or procedure's sake," our court identified Count 2 as the affirmed conviction because it was the first multiple-homicide count in the amended complaint. 300 Kan. at 166. Although the State had named H.M. as the victim in Count 2, our court emphasized that it was the murder of all four victims that elevated the crime to capital murder and made it punishable by death. 300 Kan. at 166.

When our court turned to the penalty-phase issues, it vacated the death sentences after holding that the district court's failure to sever the penalty-phase proceedings violated R. Carr's and J. Carr's Eighth Amendment rights. See 300 Kan. at 315.

But the United States Supreme Court granted review and rejected our court's Eighth Amendment holding. *Carr*, 577 U.S. at 125-26. It reversed "[t]he judgments of the Supreme Court of Kansas" and "remanded for further proceedings not inconsistent with this opinion." 577 U.S. at 126.

On remand from the United States Supreme Court, we addressed all remaining penalty-phase and sentencing issues in *R. Carr II* and *J. Carr II*. *R. Carr II*, 314 Kan. at 624; *J. Carr II*, 314 Kan. at 750. We concluded that neither individual error nor the cumulative effect of those errors required reversal of either defendant's death sentence. See *R. Carr II*, 314 Kan. at 730; *J. Carr II*, 314 Kan. at 780. We then made the statutory findings required to affirm a death sentence under Kansas law. Specifically, we concluded that the death sentence had not been imposed under the influence of passion, prejudice, or other arbitrary factors and that the evidence supported the jury's sentence. See K.S.A. 21-6619(c)(1)-(2).

R. Carr's and J. Carr's mandates use identical language to concisely summarize these appellate holdings. The mandates explain that in *R. Carr I* and *J. Carr I*, we "ordered and adjudged . . . that the convictions be affirmed in part, reversed in part, the sentence of death vacated and case remanded." But the United States Supreme Court "reversed the Kansas Supreme Court and remanded for further proceedings." And on remand, we "ordered and adjudged . . . that the death sentence is affirmed" in *R. Carr II* and *J. Carr II*. Finally, the mandates confirm that the United States Supreme Court denied R. Carr's and J. Carr's petitions for writ of certiorari from the *R. Carr II* and *J. Carr II* decisions.

In short, *R. Carr II* and *J. Carr II* affirmed each defendant's death sentence. The decisions resolved all outstanding sentencing issues raised on direct appeal. They didn't remand the matter to the district court. And they contained no explicit instruction for

further proceedings. After *R. Carr II* and *J. Carr II*, there were no outstanding issues left to resolve. And the mandates reflect this conclusion.

This analysis alone confirms that the district court properly dismissed each defendant's motion for sentencing. Despite the clarity of the mandates, R. Carr and J. Carr argue that they left outstanding sentencing issues impacting their capital sentence. We turn to those arguments next. But they do not alter our conclusion.

C. *The defendants' arguments do not establish outstanding issues regarding their death sentences.*

The Carr brothers each argue that their respective mandate is ambiguous or leaves outstanding issues related to their death sentence. They make three arguments to support this conclusion—all based on the belief that their death sentence must be tied narrowly to Count 2 of the amended complaint. First, they claim the district court never pronounced sentence on Count 2. Second, they argue there is no assurance that the jury unanimously imposed a death sentence on Count 2. Finally, they argue the district court failed to make the required statutory findings to impose a death sentence on Count 2.

Before addressing each argument, it's helpful to know how the district court managed the capital-murder counts throughout the trial proceedings.

As noted, the State's amended complaint charged each defendant with eight capital-murder counts. For each victim (H.M., A.S., B.H., and J.B.), the State charged two alternative capital-murder theories—the sex-crime theory and the multiple-murder theory. See K.S.A. 21-5401(a)(4); K.S.A. 21-5401(a)(6). The capital-murder charges based on the sex-crime theory were set out in Counts 1, 3, 5, and 7. The capital-murder charges based on the multiple-murder theory were set out in Counts 2, 4, 6, and 8.

Rather than submitting eight separate counts to the jury, the guilt-phase jury instructions and verdict forms consolidated the alternative capital-murder theories into a single count. The instructions included four capital-murder counts—one for each victim. And each of those four counts contained an "A" and "B" alternative. The "A" alternative described the State's sex-crime capital-murder theory, and the "B" alternative described the State's multiple-murder theory for a particular victim. The guilt-phase verdict forms adopted the same approach. And the jury found R. Carr and J. Carr guilty of the capital murder of each victim under both the "A" and "B" alternatives.

During the penalty phase, each brother's four capital-murder convictions were organized by victim and did not make any distinction between the "A" and "B" alternatives. And the jury sentenced the defendants to death on all four convictions.

1. *The district court lawfully pronounced a death sentence on the capital-murder conviction.*

The defendants first argue that the district court never pronounced a sentence for Count 2—the capital murder of H.M. under the multiple-murder theory. At sentencing, the district court pronounced J. Carr's sentence on the capital counts, stating "[i]n counts one, three, five, and seven your sentence is that you be put to death." The district court used nearly identical language to sentence R. Carr. And the district court made no specific pronouncement on Counts 2, 4, 6, and 8.

In *R. Carr I* and *J. Carr I*, our court identified Count 2 (for ease of reference and procedural purposes only) as the sole capital-murder conviction affirmed on appeal. Because the district court did not pronounce a sentence on Count 2 specifically, the defendants believe that they were not sentenced to death (or any other punishment) on that count. We disagree because the argument fails to account for the merger doctrine's impact on these proceedings.

We discussed the merger doctrine in *State v. Vargas*, 313 Kan. 866, 873-75, 492 P.3d 412 (2021). There, we explained that convictions on alternative counts must merge into a single conviction because the "very *fact* of a conviction . . . is punishment—even without a concomitant sentence." 313 Kan. at 872-73. This is an extension of our long-standing principle that "'two first degree murder convictions and sentences stemming from one homicide constitute double punishment and cannot be allowed to stand.'" 313 Kan. at 871 (quoting *State v. Sullivan*, 224 Kan. 110, 112, 578 P.2d 1108 [1978], *disapproved of on other grounds by State v. Berry*, 292 Kan. 493, 254 P.3d 1276 [2011]).

The doctrine applies to convictions and sentences only. It does not bar the State from charging or presenting the jury with alternative theories of liability for the same crime. *Vargas*, 313 Kan. at 872. But if a jury ultimately convicts on both counts (both theories of liability), "the verdict on [the second count] should merge by operation of law with the verdict on [the first count] and result in one conviction." 313 Kan. at 873.

Once the counts merge, the sentencing judge should impose a single sentence for the merged conviction. See 313 Kan. at 875. The journal entry should also identify a single conviction and sentence. But it can also identify both alternative theories supporting that conviction—e.g., "count 1, or in the alternative count 2." This is precisely what the sentencing judge did here.

The Journal Entry of Judgment for each defendant memorializes four capital convictions—one for each capital-murder victim—each resulting in a death sentence. Each of the four counts lists the "CAPITAL Offense of Conviction" as "CAPITAL MURDER." It then notes the counts that apply to that offense of conviction: e.g., "Count No. 1 or, in the alternative, Count No. 2." For each capital conviction, the odd numbered count is always the first listed, and the even numbered count is the "alternative" count.

The journal entry's section for "K.S.A. Number" lists both K.S.A. 21-3439(a)(4), the sex-crime theory, and K.S.A. 21-3439(a)(6), the multiple-murder theory, for each of the four capital-murder convictions.

This provides meaningful context for the district court's sentencing pronouncement. The district court imposed four death sentences for each of the four capital-murder convictions. By denoting Counts 1, 3, 5, and 7, the judge did not omit the even-numbered counts because he forgot to pronounce sentence on them. He referenced Counts 1, 3, 5, and 7 specifically because the even-numbered counts had merged by operation of law into their odd-numbered counterpart.

The merger doctrine clarifies that there is no meaningful distinction between Count 1 and Count 2. Both had merged into a single capital-murder conviction for sentencing purposes. And any sentence pronounced on Count 1 also controlled the count merged into it—Count 2. Even if the merger doctrine's impact on the defendants' sentences was implicit at the time of pronouncement, it became explicit in the journal entries of judgment. Cf. *State v. Juiliano*, 315 Kan. 76, 78-84, 504 P.3d 399 (2022) (court will review context of entire sentencing hearing, not just focus on single portion or statement).

Thus, the district court pronounced a sentence of death for each defendant on the capital-murder conviction that our court affirmed on direct appeal.

2. *Defendants' unanimity argument does not show any unresolved issues in the mandates.*

Applying a similar rationale, the defendants also argue that we cannot know whether the jury unanimously agreed to impose the death penalty for Count 2 because the district court did not carry forward the capital-murder liability theories in the penalty-

phase instructions and verdict forms. The argument rests on a faulty premise—that the jury's sentencing decision was tied to the capital-murder theories specifically.

The charged capital-murder theory is certainly relevant in the guilt-phase. For example, the elements of the sex-crime theory of capital murder differ slightly from the multiple-murder theory. So when the State charges both theories in separate counts, it must prove every element of each capital-murder theory.

But the jury's focus shifts from the elements of the offense to aggravating and mitigating circumstances in the penalty phase. The jury may impose a death sentence only if it unanimously finds "beyond a reasonable doubt that one or more of the aggravating circumstances enumerated in K.S.A. 21-6624 . . . exist and, further, that the existence of such aggravating circumstances is not outweighed by any mitigating circumstances which are found to exist." K.S.A. 21-6617(e). And mitigating and aggravating circumstances are not tied to, or dependent on, the capital-murder theory supporting defendant's conviction.

Mitigating circumstances typically focus on the individual defendant, not the capital-murder theory. See K.S.A. 21-6625. They include circumstances that "lessen or diminish the moral culpability or blame of defendant or otherwise warrant a life sentence." *State v. Robinson*, 303 Kan. 11, 190-91, 363 P.3d 875 (2015), *disapproved on other grounds in State v. Cheever*, 306 Kan. 760, 402 P.3d 1126 (2017).

Statutory aggravating circumstances largely focus on how a defendant committed the crime. Kansas law recognizes only eight aggravating circumstances. See K.S.A. 21-6624. Granted, some aggravating circumstances overlap with elements of certain capital-murder theories. Compare K.S.A. 21-6624(b) (aggravating circumstance: defendant killed, created great risk of death to more than one person) with K.S.A. 21-5401(a)(6) (crime of capital murder is intentional and premeditated killing of more than one person

in same act, transaction). But the State can rely on any, or all eight, aggravating circumstances in K.S.A. 21-6624 no matter which capital-murder theory supported defendant's conviction. The evidence must simply support them. In other words, none of the aggravating circumstances are limited to specific capital-murder theories as a matter of law.

This case illustrates the point. The State alleged the existence of four aggravating circumstances: (1) defendant killed more than one person; (2) defendant committed the crime to receive monetary value; (3) defendant committed the crime to avoid arrest or prosecution; and (4) defendant committed the crime in an especially heinous, atrocious, or cruel manner. The jury was free to consider all four aggravating circumstances, whether defendants had been convicted of only the sex-crime theory, the multiple-murder theory, or both. The State's aggravated circumstances applied equally to both the sex-crime and multiple-murder theories of conviction.

Thus, there is no concern about juror unanimity in the penalty phase. And defendants' argument fails to show that the mandates left any unresolved issues.

3. *The district court made the statutorily required findings for a death sentence.*

Finally, focusing on Count 2 specifically, the defendants argue that the district court failed to make the findings required by statute for that count.

Before pronouncing sentence in a death-penalty case, K.S.A. 21-6617(f) requires the district court "review any jury verdict imposing a sentence of death hereunder to ascertain whether the imposition of such sentence is supported by the evidence." K.S.A. 21-6617(f) (formerly cited as K.S.A. 21-4624). At sentencing, the district court made this

statutory finding, announcing "[I have] reviewed the jury's verdict imposing a sentence of death against both defendants and I find that such sentence is supported by the evidence. I'll accept the verdict, enter judgment accordingly."

The defendants argue that this finding was not specific to any counts in the amended complaint. They believe that the finding needed to reference Count 2 specifically because that was the count this court affirmed in *R. Carr I* and *J. Carr I*. And because the district court later pronounced a death sentence on the odd-numbered capital counts only—Counts 1, 3, 5, and 7—defendants believe the district court's finding applied only to those counts. The argument fails to withstand scrutiny.

First, nothing in the statute suggests that the district court's statutory finding needs to be count-specific. And the district court's blanket finding suggests it applied to all capital counts of conviction.

Second, in *R. Carr I* and *J. Carr I*, the court identified Count 2 as the conviction upheld only "for procedure's sake." *R. Carr I*, 300 Kan. at 166. It referenced that count simply because it was the first multiple-murder theory charged in the amended complaint. 300 Kan. at 166. But our court emphasized that it was affirming the "capital conviction for the murder of all four of the victims." 300 Kan. at 166.

More importantly, once the jury found each defendant guilty of the capital murder of H.M. under each alternative capital-murder theory—Count 1 and Count 2—those two counts merged into a single capital-murder conviction by operation of law. And each alternative theory independently supported that single capital-murder conviction. So any finding on Counts 1, 3, 5, and 7 applied equally to Counts 2, 4, 6, and 8.

Thus, the district court complied with K.S.A. 21-6617(f). And *R. Carr I*'s and *J. Carr I*'s reference to Count 2 did not create unresolved issues for the district court to

address. This conclusion is reinforced by *R. Carr II* and *J. Carr II*, where we affirmed the death sentence for each defendant after finding that sentence was supported by the evidence and was not "'imposed under the influence of passion, prejudice or any other arbitrary factor.'" *R. Carr II*, 314 Kan. at 730.

In sum, the mandate in each defendant's case reflected a final judgment affirming each defendant's death sentence. It did not remand for further proceedings or leave unresolved capital-sentencing issues for the district court.

II. *Defendant's newly raised, unpreserved claims of sentencing error on the non-capital counts cannot evade the mandate rule.*

Defendants' sentencing motions did not challenge only the mandate rule's application to the capital sentences. They also raised new claims of sentencing error on the non-capital convictions.

First, defendants argue that the district court abused its discretion by ordering certain convictions to run consecutive to others because some of those convictions were overturned on appeal. Second, defendants also argue that the court must reverse their conviction for Count 51—the felony murder of Walenta—because it is multiplicitous to their capital-murder conviction.

Defendants first raised these issues after their direct appeals were final and the mandates had issued. Appellate courts generally do not entertain arguments raised for the first time on appeal—let alone post-mandate. And the mandate rule prevents district courts from addressing issues resolved on direct appeal.

Recognizing these limits, defendants argue that our court has statutory authority to review these arguments as unassigned error under K.S.A. 21-6619 and as illegal-sentence

claims under K.S.A. 22-3504. We address each statutory basis in order and conclude that neither authorizes the court to consider defendants' new legal claims.

A. *Our court cannot review the new arguments as unassigned errors.*

K.S.A. 21-6619 governs direct appeals from convictions resulting in a death sentence. The statute includes four subsections that outline the forum, procedure, and scope of appellate review:

> "(a) *A judgment of conviction resulting in a sentence of death shall be subject to automatic review by and appeal to the supreme court of Kansas in the manner provided by the applicable statutes and rules of the supreme court governing appellate procedure.* The review and appeal shall be expedited in every manner consistent with the proper presentation thereof and given priority pursuant to the statutes and rules of the supreme court governing appellate procedure.
>
> "(b) *The supreme court of Kansas* shall consider the question of sentence as well as any errors asserted in the review and appeal and *shall be authorized to notice unassigned errors appearing of record if the ends of justice would be served thereby.*
>
> "(c) With regard to the sentence, the court shall determine:
>
> (1) Whether the sentence of death was imposed under the influence of passion, prejudice or any other arbitrary factor; and
>
> (2) whether the evidence supports the findings that an aggravating circumstance or circumstances existed and that any mitigating circumstances were insufficient to outweigh the aggravating circumstances.
>
> "(d) The court shall be authorized to enter such orders as are necessary to effect a proper and complete disposition of the review and appeal." (Emphases added.)

Subsection (a) provides that defendants can appeal a judgment of conviction resulting in a death sentence directly to our court. During that review, subsection (b) requires our court to consider the sentence and address errors asserted on appeal. It also authorizes our court to consider "unassigned errors" in the record, if doing so would serve the ends of justice.

But subsection (b) is not unlimited. The Legislature's grant of authority to notice unassigned errors is limited to the mandatory review of a capital-murder conviction and death sentence on direct appeal. Nothing in the statute's plain language suggests that the court's authority to address unassigned error continues after a "proper and complete disposition of the review and appeal." K.S.A. 21-6619(d).

To the contrary, K.S.A. 21-6619(a) makes clear that the direct appeal of a death sentence is subject to the "applicable statutes and rules of the supreme court governing appellate procedure." And we have consistently held that the statutory authority to notice unassigned errors cannot be used by an appellant to justify "an end run around our rules of appellate procedure." *Cheever*, 306 Kan. at 774.

Under those rules, an appellate judgment is final when the mandate is issued. See *State v. Showalter*, 319 Kan. 147, 173, 553 P.3d 276 (2024). And here, once we issued our mandates, the judgment affirming the conviction and sentence for R. Carr's and J. Carr's capital-murder convictions was final. This ended the mandatory review of their death sentences—and with it, this court's authority to address unassigned errors.

B. *The illegal-sentence statute does not permit the courts to review defendants' new issues.*

K.S.A. 22-3504(a) permits a court to correct an illegal sentence at any time while the defendant is serving the sentence. But the statute narrowly defines what constitutes an

illegal sentence. See *State v. Brown*, 320 Kan. 426, 429-30, 569 P.3d 909 (2025). An illegal sentence is one that's "[i]mposed by a court without jurisdiction," "does not conform to the applicable statutory provision, either in character or punishment," or "is ambiguous with respect to the time and manner in which it is to be served at the time it is pronounced." K.S.A. 22-3504(c)(1). "Attacks on the constitutionality of the sentencing statutes or the sentencing procedure do not equate to a failure to conform to the statute and do not meet the definition of an illegal sentence." 320 Kan. at 430.

The defendants' new claims fall outside the scope of the illegal-sentence statute. Defendants first argue that the district court abused its discretion by imposing consecutive sentences. But that claim is not based on the judge's failure to conform to any applicable statutory provision (or any other definition of an illegal sentence). Indeed, the district court had discretion to impose concurrent or consecutive sentences in their multi-conviction cases. See K.S.A. 21-4720(b)(2) (Torrence 2007). And defendants' multiplicity challenge to the felony-murder conviction—Count 51—is grounded in constitutional doctrine and falls outside the illegal-sentence statute. See *State v. Sims*, 294 Kan. 821, Syl. ¶ 4, 280 P.3d 780 (2012) (multiplicity challenge falls outside the statutory definition of an illegal sentence).

Because defendants' new claims fall outside the scope of K.S.A. 21-6619 and the illegal-sentence statute, the courts lack authority to address them.

III. *J. Carr's illegal-sentence claim based on the district court's lack of subject-matter jurisdiction had no impact on his controlling sentence.*

J. Carr argues that his non-capital sentence is illegal because several convictions were dismissed for lack of subject-matter jurisdiction. And he believes this affected the district court's sentencing on the remaining non-capital counts affirmed on appeal.

Indeed, *J. Carr I* reversed defendant's convictions on Counts 25, 26, and 29-40 because they failed to charge crimes under Kansas law. 300 Kan. at 367. Even if the district court lacked jurisdiction to sentence J. Carr on those counts, those sentences did not render his sentence illegal under the Kansas Sentencing Guidelines Act (KSGA). In short, the reversal of these convictions had no impact on the sentence. To understand why, we look to the statute controlling sentencing in multiple-conviction cases, which remains the same now as it was when R. Carr and J. Carr were sentenced. Compare K.S.A. 21-4720 (Torrence 2007) with K.S.A. 21-6819.

The sentencing process in multiple-conviction cases has two fundamental components—designating the base sentence and applying criminal history. To calculate the base sentence, the court first identifies a primary crime—the on-grid crime with the highest severity level. Then it applies defendant's full criminal-history score to calculate defendant's sentence on the primary crime. K.S.A. 21-4720(b)(3) (Torrence 2007). That sentence is the base sentence. While the court calculates a sentence for the other crimes of conviction, it does not apply defendant's full criminal-history score to those non-base sentences. K.S.A. 21-4720(b)(5) (Torrence 2007). And a defendant's total sentence for convictions arising from multiple counts cannot exceed twice the base sentence. K.S.A. 21-4720(b)(4) (Torrence 2007). So the base sentence serves as the foundation for the defendant's sentence in a multiple-conviction case.

If the primary crime is reversed on direct appeal, then that foundation disappears because all remaining convictions were originally non-base sentences without an assigned criminal history score. In that situation, the statute requires remand for resentencing and the sentencing process begins anew—identifying a new primary crime and calculating a new base sentence. See K.S.A. 21-4720(b)(5) (Torrence 2007).

But J. Carr's primary crime was affirmed on appeal—Count 9, the attempted murder of H.G. And his sentence was capped at twice the base sentence based solely on the sentences imposed for the non-primary convictions affirmed on appeal. In short, the reversal of Counts 25, 26, and 29-40 had no impact on his KSGA sentence.

Nor did it impact his off-grid sentences. In multiple-conviction cases, the sentencing court has discretion to run the sentences consecutive or concurrent. K.S.A. 21-4608(a) (Torrence 2007). When, as here, the judge orders the sentences for on-grid convictions to run consecutive to off-grid convictions, defendant must serve the on-grid sentences after completing the off-grid sentences. K.S.A. 21-4720(b)(2) (Torrence 2007). So the reversal of on-grid convictions doesn't impact a defendant's off-grid sentences.

J. Carr has failed to show that the reversal of Counts 25, 26, and 29-40 caused him injury or otherwise resulted in an illegal sentence. And he is not entitled to resentencing.

CONCLUSION

Each defendant's mandate reflected a final appellate judgment affirming their death sentence. The mandates did not remand the matters or instruct the district court to conduct further proceedings. And defendants have failed to demonstrate that the mandates left any outstanding capital-sentencing issues for the district court. Also, defendants' motions are not proper vehicles for raising new challenges to their non-capital convictions. Finally, J. Carr fails to show that the reversal of Counts 25, 26, and 29-40 rendered his sentence illegal under the KSGA. We thus affirm the district court's dismissal of R. Carr's and J. Carr's post-mandate motions for sentencing.

Affirmed.

LUCKERT, J., not participating.

Court:	Supreme Court
Case Number:	127850
Case Title:	State of Kansas, Appellee, v. Reginald D. Carr, Appellant.
Type:	SC Order - Motion for Rehearing or Modification - Denied Appellant's Motion for Rehearing or Modification

Considered by the Court and denied.

SO ORDERED,

/s/ Eric S. Rosen, Chief Justice

Electronically signed on 2026-08-20 14:47:48

IN THE SUPREME COURT OF THE STATE OF KANSAS

REGINALD D. CARR JR,	)	
Defendant/Appellant	)	
	)	**County Appeal From: Sedgwick**
	)	**Appellate Court No. 24-127850-S**
v.	)	**Dist. Ct. No. 2000-CR-002978**
	)	
	)	
STATE OF KANSAS,	)	
Plaintiff/Appellee	)	

MOTION FOR REHEARING OR MODIFICATION

Appellant Reginald D. Carr, Jr., through counsel, moves for rehearing and clarification of this Court's June 26, 2026 opinion affirming the denial of relief on his appeal of his motion to correct illegal sentence. The Court's June 26, 2026 decision was objectively unreasonable as a matter of federal and state law. Under K.S.C. Rule 7.06, rehearing is appropriate because the Court overlooked and misapprehended points of fact and law establishing that the mandate rule prevented the district court from conducting a new sentencing proceeding after remand by this Court and that the surviving convictions were supported by valid death sentences through the merger doctrine and the original penalty phase. Clarification is also appropriate regarding significant matters in Appellant's brief not addressed by this Court's opinion.

I. The Court misconstrued the mandate rule by recharacterizing Reginald Carr's claims as new legal issues rather than as questions of how to implement the existing mandates.

The Court's error lies not in its statement of Kansas law, but in its misapplication of that law to the issues Mr. Carr presented. The opinion correctly recognizes the fundamental principles of Kansas's mandate rule: that the rule is statutory rather than jurisdictional. (*Carr III*, slip op. at 7).[1] District courts must implement both the letter and the spirit of the appellate mandate, and issues not finally resolved by the appellate court remain within the district court's authority on remand. The Court acknowledges that *Soto* permits district courts to resolve "outstanding issues" necessary to carry out the mandate. *State v. Soto*, 310 Kan. 242, 256, 445 P.3d 1161, 1170 (2019). However, the opinion misapplies *Soto* to the arguments here.

Mr. Carr has argued throughout these proceedings that the district court retained authority to resentence him because the appellate mandates left unresolved questions regarding the legal effect of the surviving capital murder convictions after reversal of the alternative counts. Mr. Carr contends that the district court

[1] Hereinafter, all references to this Court's current opinion will be designated as (*Carr III*, slip op. at ___).

possessed authority to reopen the merits of the convictions or revisit issues previously decided on direct appeal. Implementing the mandates necessarily required the district court to determine the sentencing consequences of the merger and reversal, including whether a death sentence could still exist for the remaining conviction. Consistent with Mr. Carr's argument, this Court has recognized repeatedly that district courts retain authority to resolve matters left unresolved by appellate disposition. *Gannon v. State*, 303 Kan. 682, 703, 368 P.3d 1024, 1039 (2016); *State v. Collier*, 263 Kan. 629, Syl. ¶ 4, 952 P.2d 1326 (1998); *State v. Soto*, 310 Kan. 242, 252, 445 P.3d 1161, 1168 (2019).

Rather than addressing the unresolved consequences of the ever-changing prior decisions in this case, the Court's opinion reframes Mr. Carr's claims as a "new legal issue" not asserted until after issuance of the mandate (*Carr III*, slip op. at 10-11). Though that characterization is dispositive to the Court's analysis, the opinion never identifies where the earlier mandates expressly decided the issues of oral pronouncement, the effect of merger on sentencing, or the legal consequences of reversing the counts on which the district court expressly imposed death sentences. It ignores that the errors

were not known or in existence yet so that the lower court could legitimately consider them.

Instead, this Court concludes that because those arguments were not previously litigated, they constitute impermissible new legal theories. The Court comes to this conclusion rather than recognizing that the outstanding issues arise from its attempts to navigate the errors contained in trying to implement two flawed mandates.

That approach substantially narrows the rule enunciated in *Soto*. Under *Soto*, the relevant inquiry is whether an issue was previously "finally settled" by the appellate court or instead remained unresolved after issuance of the mandate. Here, no prior appellate decision addressed the legal consequences of affirming Count 2 after reversing Count 1, or whether the district court had ever orally pronounced a sentence on the surviving conviction. *See generally, State v. Carr* (*Carr I*), 300 Kan. 1 (2014); *Kansas v. Carr*, 577 U.S. 108 (2016); *State v. Carr* (*Carr II*), 314 Kan. 615 (2022).[2]

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[2]This Court now infers an oral pronouncement suggesting that the trial judge meant to merge the two theories (*Carr III*, slip op at 12-14), though the judge never said or wrote that he was merging the two theories. The Court cannot simply "assume" the judge's intent under the heightened reliability requirements of a death penalty case under the Eighth Amendment.

The opinion does not identify language in the mandate or any prior decision resolving those questions. Rather, it adopts a different rule—that any legal argument not previously raised before issuance of the mandate is barred, even if it concerns implementation of the appellate judgment itself in which many errors have been acknowledged since the original mandate.

The distinction is significant. Kansas law has long recognized that a district court exceeds its authority when it revisits matters already decided by the appellate court, but it is likewise an abuse of discretion for the district court to fail to correct sentencing errors "at any time" while the defendant is serving that sentence. K.S.A. 22-3504(a); *State v. Redick*, 307 Kan. 797, 806, 414 P.3d 1207 (2018). But Mr. Carr did not seek reconsideration of any holding contained in the prior appellate opinions. He sought resolution of legal questions on sentencing errors that became material only **after** the appellate process determined multiple errors as to which convictions remained in effect.

By conflating unresolved implementation issues with entirely new collateral attacks, the Court expands the preclusive effect of the mandate rule beyond its traditional function of preserving finality and

instead transforms it into a procedural bar against addressing questions that the mandates themselves left unanswered. Because the opinion's conclusion rests on that recharacterization of Mr. Carr's claims, rehearing is warranted to clarify whether the issues presented were properly analyzed as implementation of the Court's prior mandates or as independent post-mandate challenges.

II. The Court erred by treating merger of alternative convictions as a substitute for the district court's required oral pronouncement of the sole remaining capital murder sentence.

The Court's merger analysis does not resolve the distinct question of whether a sentence was ever orally pronounced on Count 2. The merger doctrine dictates that alternative verdicts may result in only one conviction and one punishment, but it does not itself perform the judicial act of imposing that punishment. *See State v. Vargas*, 313 Kan. 866, P.3d 412 (2021) (holding that when a jury returns unanimous guilty verdicts on two alternatively charged counts, a district court may enter only one conviction). In other words, merger and sentencing are separate legal events.

Kansas law provides that a sentence becomes effective when pronounced from the bench, and further that the oral pronouncement controls over a later journal entry, regardless of the

sentencing court's intent. *Royse v. State*, 252 Kan. 394, 397, 825 P.2d 1187 (1992); *Abasolo v. State*, 284 Kan. 299, 304, 160 P.3d 471 (2007). The journal entry therefore could memorialize a sentence actually pronounced on a merged conviction, but it could not transform the court's express reference to Count 1 into an oral sentence on Count 2.

Here, the district court did not announce a single sentence on a merged capital-murder conviction or state that its pronouncement applied to Counts 1 and 2 collectively. Instead, it expressly imposed death on "counts one, three, five and seven." Count 2 was never mentioned. Mr. Carr's claim does not concern an ambiguity within the sentence or a conflict between two statements made from the bench. The pronouncement was unambiguous: the court identified the specific counts receiving death sentences, and Count 2 was not among them.

The Court nevertheless concludes that there was "no meaningful distinction" between Counts 1 and 2 after merger and that any sentence pronounced on Count 1 necessarily controlled Count 2 (*Carr III*, slip op. at 14). But that reasoning conflates the legal identity of a merged conviction with the procedural requirement of

oral pronouncement on the only capital sentence remaining. Even where two alternative theories support one conviction, the defendant retains the right to be present and personally hear the punishment imposed on that conviction.

Merger may prevent both verdicts from standing as separate convictions, but it cannot supply words the sentencing judge never spoke. Nor can an appellate court retrospectively transfer a sentence from a reversed count to the differently numbered count ultimately retained on appeal merely by characterizing the latter designation as procedural. The Court's own acknowledgment that the district court "made no specific pronouncement on Counts 2, 4, 6, and 8" demonstrates the defect (*Carr III*, slip op. at 14).

The Court's reliance on the surrounding sentencing context and the journal entry is also inconsistent with the purpose of the oral pronouncement rule. The Court cannot guess or manufacture the trial judge's intent when none exists. Context can clarify contradictory or imprecise words actually spoken, but it cannot generate a sentence from silence. *State v. Hill*, 313 Kan. 1010, 492 P.3d 1190 (2021); *State v. Juiliano*, 315 Kan. 76, 504 P.3d 399 (2022). While the journal entry listed Count 1 "or, in the alternative, Count

2," that document could only record a sentence previously imposed—it could not impose death on Count 2 for the first time. Since Count 2 is the sole capital-murder conviction retained after direct review[3], and because no sentence was orally pronounced on that count or expressly on a merged Count 1/Count 2 conviction, the judgment remains incomplete, and remand for a lawful sentencing proceeding is required. This appellate review court should not substitute a fact finding for the trial judge where none exists. *Id.*

III. The Court improperly assumed a unanimous death verdict by the jury on Count Two when there was no evidence on the record that the jury vote was unanimous.

The Court concludes that the jury necessarily imposed a lawful death sentence on Count 2 because the penalty phase proceeded by victim rather than by charging theory, and because the alternative counts had merged into a single conviction (*Carr III*, slip op. at 16). That conclusion, however, assumes a fact not in evidence and the very fact in dispute. The record reflects that while the guilt-phase jury returned unanimous verdicts on both alternative capital-murder theories, the penalty-phase jury did not determine whether death

[3] Count 2 was first alternatively charged and merged with Count 1, and later reinstated by this Court in *Carr I* after the reversal of Count 1.

should be imposed separately on Counts 1 and 2. In other words, the State's aggravators may not have been applied equally by jurors, or whether the jury imposed the death sentence because of the sex crimes theory or the multiple victims theory.

For example, some jurors may have found one defendant more culpable than another on the sex crime theory versus the multiple victim theory, finding less participation by one over the other for a certain victim and opting for the other theory. The fact is no one knows because no individualized designations were made on the verdict forms. Regardless, the Eighth Amendment reliability standard does not allow the courts to "assume" the jury unanimously found both theories in a death penalty case. Kansas statutes and case law reflect the widely recognized understanding that, under the Eighth Amendment of the United States Constitution, a "sentence of death is different from any other punishment, and accordingly there is an increased need for reliability in the determination that death is the appropriate sentence." *State v. Kleypas*, 305 Kan. 224, 274, 382 P.3d 373, 403 (2016); *see also, e.g., Gardner*, 430 U.S. at 357–58 (recognizing that close scrutiny of capital sentencing procedures was necessary because the death penalty differs "in both its severity and

its finality" from any other punishment); *Beck v. Alabama*, 447 U.S. 625, 637, 100 S. Ct. 2382, 2389, 65 L. Ed. 2d 392 (1980) (declaring that the risk of forgoing a procedural safeguard "cannot be tolerated in a case in which the defendant's life is at stake"). The need for heightened reliability "does not change the standard of review, but it requires courts to take a closer and more vigilant review of issues whenever a death sentence is involved." *Kleypas v. State*, 62 Kan. App. 2d 654, 660 (2022). In other words, this "obligation mandates that [the Supreme Court of Kansas] [does] not approve a sentence of death that is obtained through erroneous procedures." *State v. Kahler*, 307 Kan. 374, 421,410 P.3d 105, 136 (2018) (Johnson, J., dissenting).

Here, the sentencing proceedings focused only on four capital counts, and neither the penalty instructions nor the verdict forms required the jury to render a separate or identifiable death recommendation for Count 2. The record is silent as to whether the jury unanimously imposed death on Count 2. At worst, Count 2 was never considered during the penalty phase at all.

That distinction is constitutionally significant. Under K.S.A. 21-6617(e), a death sentence may be imposed only if the jury

unanimously finds the statutory aggravating circumstances and unanimously concludes that those aggravating circumstances are not outweighed by mitigating evidence. Those findings are individualized, count-specific determinations entrusted exclusively to the jury. A capital sentencing phase jury satisfies the demands of the Eighth and Fourteenth Amendments by weighing mitigating and aggravating factors related to the defendant's character and history and the "circumstances of the *particular offense.*" *Woodson v. North Carolina*, 428 U.S. 280, 281, 96 S. Ct. 2978, 2980, 49 L. Ed. 2d 944 (1976) (emphasis added); U.S. CONST. amend. VIII, XIV; see also *Lockett v. Ohio*, 438 U.S. 586, 605, 98 S. Ct. 2954, 2965, 57 L. Ed. 2d 973 (1978) ("[I]ndividualized consideration [is] a constitutional requirement in imposing the death sentence"). A capital jury's role in sentencing is non-delegable, as the Sixth Amendment requires a jury, not a judge, to make the findings required to sentence a person to death. *Hurst v. Fla.*, 577 U.S. 92, 94, 136 S. Ct. 616, 619, 193 L. Ed. 2d 504 (2016); U.S. CONST. amend. VI.

Kansas juries apply a statutory weighing equation to make their individualized determinations. K.S.A. 21-6617(e); *Carr II*, 314 Kan. at 669. Only if the jury unanimously finds beyond a reasonable doubt

that one or more statutory aggravating circumstances exist and that they are not outweighed by any mitigating circumstances may the defendant be sentenced to death. K.S.A. 21-6617(e).

As Mr. Carr argued throughout his briefing, the jury's unanimous verdict of guilt on both alternative theories cannot substitute for a unanimous penalty-phase verdict because guilt and punishment require fundamentally different inquiries. The jury's sentencing function is not merely factual; sentencing reflects an individualized moral judgment reserved to the jury by the Sixth, Eighth, and Fourteenth Amendments. Ambiguity in a death penalty case violates the Eighth Amendment requirement of heightened reliability. *See Kleypas*, 305 Kan. at 274.

The Court's opinion effectively infers a penalty-phase verdict from the structure of the trial rather than from the jury's actual findings. But Kansas law and the Eighth Amendment require certainty where a death sentence is imposed. *Id.* Because no verdict form demonstrates that the jury unanimously recommended death for Count 2, the opinion replaces the jury's constitutionally required determination with an imaginary appellate reconstruction of what the jury might have intended. Neither the merger doctrine nor the

organization of the penalty phase by victim answers the threshold question whether the jury unanimously returned the fact findings required by K.S.A. 21-6617(e) for the only death conviction that ultimately survived appellate review.

IV. The Court failed to address the constitutional consequences of treating the penalty verdict as a general verdict potentially resting on a legally invalid capital-murder theory.

The Court also overlooked Mr. Carr's distinct argument under *Stromberg v. California*, 283 U.S. 359, 51 S. Ct. 532, 75 L. Ed. 1117 (1931), that after *Carr I* reversed Count 1 and later proceedings left Count 2 as the sole surviving capital conviction, the penalty verdict effectively became a general verdict resting on two possible legal theories—one of which had already been found legally invalid. *Carr I* conducted a harmless-error analysis under *Stromberg* with respect to the guilt-phase verdict because the jury had separately and unanimously found both alternative theories on the verdict forms. There was no guesswork there. However, no comparable analysis was done for the penalty phase.

The jury was never asked to distinguish between the alternative theories in recommending death; therefore, there were no fact findings whatsoever on which the district court could base its

decision. Rather than addressing that constitutional question, the opinion concludes that the merger doctrine resolves the factual question because the penalty proceedings were organized by victim instead of by charging theory (*Carr III*, slip op. at 15-16). That reasoning sidesteps Mr. Carr's argument.

The constitutional concern is not whether alternative theories ultimately merged into a single conviction, but whether it is certain that the jury's recommendation of death rested on the legally valid theory following the elimination of an invalid one on appeal. The district court did not address the issue. Cf. *Zant v. Stephens*, 462 U.S. 862, 879 (1983)(a death sentence rendered without individualized consideration violates the 8th and 14th Amendments). Because the penalty verdict form did not separate the theories, it does not matter that the counts were separated by victim; there is no way to determine whether every juror would have recommended death on Count 2 standing alone. Individualized consideration is a constitutional requirement in imposing the death sentence. *Woodson v. North Carolina*, 428 U.S. 280, 281 (1976); *Lockett v. Ohio*, 438 U.S. 586 605 (1978). The identity of the victim does not answer the question of the jury vote, which is the fact determination on which

the death sentence rests. This Court's opinion fails to address that problem.

The opinion therefore resolves the case without engaging with the constitutional question preserved in Mr. Carr's briefing: Whether *Stromberg* permits affirmance of a death sentence where one possible legal basis for the jury's recommendation has been invalidated, and the verdict provides no evidentiary means of identifying the theory actually adopted. Guessing as to the jury vote is not a legally sound or constitutionally adequate answer to the question. There can be no heightened reliability as is required by the Eighth Amendment in these circumstances. *See Kleypas*, 305 Kan. at 274.

V. The Court construed K.S.A. 21-6619 too narrowly and left grave capital-sentencing errors beyond any meaningful review.

Finally, the opinion construes K.S.A. 21-6619 almost exclusively through the lens of the mandate rule and, in doing so, overlooks the statute's independent function in Kansas's capital sentencing scheme. Reginald Carr argued that K.S.A. 21-6619 imposes upon this Court a continuing responsibility to ensure that a sentence of death is lawfully imposed and supported by the statutorily required findings. His argument was not that the statute authorizes unlimited collateral review of every issue decided on direct

appeal, but rather that it independently permits review of the validity of the death sentence for the sole remaining capital murder conviction in this case. Mr. Carr argued in his opening brief that Count 2 suffered from three fundamental defects: the absence of a unanimous penalty verdict, the sentencing court's failure to make the findings required by K.S.A. 21-6617(f) with respect to Count 2, and the absence of any oral pronouncement of sentence on that count.

This Court concludes that *Carr II* resolved all sentencing issues in reversing Count 1 and that no further review remained available to the district court after the mandates issued. (Carr III, slip op. at 22). In doing so, the Court effectively collapsed K.S.A. 21-6619 into the mandate rule, by treating the statute as exhausted upon the conclusion of direct review rather than recognizing it as an independent safeguard against the execution of an unlawful death sentence. *See Kleypas*, 305 Kan. at 274. The Court failed to recognize that the statute is an independent safeguard against the execution of an unlawful death sentence even after direct appeal has concluded. It is not a procedural bar to relief.

The Court cannot reconcile its construction with the heightened reliability required in capital cases. *See Kleypas*, 305 Kan. at 274.

The errors identified in these proceedings did not arise Count 2—not Count 1—became the sole surviving capital conviction as a result of the appellate process. Those issues therefore could not have been litigated in the original sentencing proceedings because they did not yet exist. Construing K.S.A. 21-6619 so narrowly that it provides no mechanism to review whether a lawful death sentence exists under these unique circumstances undermines the statute's purpose and risks insulating fundamental capital-sentencing defects from judicial review altogether.

VI. Conclusion

Rehearing or modification is warranted. First, the opinion materially broadens the mandate rule by effectively holding that any legal argument not raised before issuance of the mandate is forever procedurally barred, even when the issue arises only *because* of the appellate court's disposition in the case. Second, the Court inserts its own factual assumptions and reaches conclusions that depart from established Kansas sentencing law and leave open significant constitutional and statutory questions concerning the validity of the only remaining death sentence in this case.

Given the heightened reliability required in capital proceedings

and the unique procedural posture presented here, clarification through rehearing or modification is appropriate under Rule 7.06. Counsel respectfully asks that this Court grant this motion, rehear the parties' arguments and/or modify its opinion, and issue any such orders as are necessary to resolve the matters raised by Mr. Carr.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 6th, 2026, I electronically filed the foregoing Motion for Rehearing or Modification, using the electronic filing system, which will send notice to all registered counsel of record, including:

Brian M. Pomerantz; NY Bar #4141024

I further certify that on August 6th, 2026, a true and correct copy of the document will be sent via U.S. mail, postage prepaid, addressed to:

Reginald D. Carr, Jr.
El Dorado Correctional Facility
P.O. Box 311
El Dorado, KS 67042

/s/ Brianna R. Harris
Brianna R. Harris, #26549