

No. 22-125269-A

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**IN THE  
COURT OF APPEALS  
OF THE  
STATE OF KANSAS**

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**STATE OF KANSAS**  
Plaintiff-Appellee

vs.

**JASON W. PHIPPS**  
Defendant-Appellant

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**REPLY BRIEF OF APPELLANT**

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Appeal from the District Court of Sumner County  
Honorable William R. Mott, Judge  
District Court Cases 22-CR-02

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Kai Tate Mann, #26234  
Kansas Appellate Defender Office  
Jayhawk Tower  
700 Jackson, Suite 900  
Topeka, Kansas 66603  
(785) 296-5484  
(785) 296-2869 Fax  
[adoservice@sbids.org](mailto:adoservice@sbids.org)

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### **Nature of the Case**

Jason W. Phipps directly appeals his sentence.

### **Statement of Issue**

**Reply Issue I: Mr. Phipps' criminal history score challenge is not moot. (Response to prosecution's brief at 4-5)**

### **Statement of Facts**

Mr. Phipps has adequately set out the facts in his Appellant's brief, and incorporates them via reference.

### **Arguments and Authorities**

**Reply Issue I: Mr. Phipps' criminal history score challenge is not moot. (Reply to prosecution's brief at 4-5)**

### **Analysis**

The prosecution alleges Mr. Phipps' criminal history score challenge is moot because he has served his felony sentence. (Prosecution's Brief, 4-5). The prosecution's argument is incorrect and should not be entertained by this Court.

Mr. Phipps was sentenced to 14 months' incarceration for his primary crime of conviction, the standard number in the B-9 box. (R. I, 84). That sentence, and a 6-month felony sentence were run consecutively to 18 months' of jail sentences for the two misdemeanors. (R. I, 78-82).

But the longest possible presumptive sentence for Mr. Phipps' correct criminal history score of D is 13 months. Mr. Phipps overserved his felony sentence by at least one, if not more, months.

Mr. Phipps was released from the prison portion of his sentence on January 24,

2023. But as of the filing of this brief, Mr. Phipps is still serving his jail sentence. As such, his criminal history score challenge is not moot. When an original sentence is void and replaced with a correct sentence, the individual serving is to be credited with all time served on the void sentence. *Jackson v. State*, 204 Kan. 841, 846, 466 P.2d 305 (1970). Because he is entitled to credit for all the time served, and is still serving his sentence, Mr. Phipps' criminal history score challenge is not moot.

### Conclusion

Because he is entitled to credit for all time served on his illegal sentence and still serving a sentence, Issue I of the Appellant's brief is not moot. Mr. Phipps respectfully requests this Court order him the relief as requested in his Appellant's brief.

Respectfully submitted,

/s/ Kai Tate Mann

Kai Tate Mann, #26234

Kansas Appellate Defender Office

Jayhawk Tower

700 Jackson, Suite 900

Topeka, KS 66603

(785) 296-5484

(785) 296-2869 Fax

[adoservice@sbids.org](mailto:adoservice@sbids.org)

Attorney for Appellant

### Certificate of Service

I hereby certify that the above and foregoing Appellant's Reply Brief was served on the Sumner County District Attorney, by notice of electronic filing pursuant to Supreme Court Rule 1.11(b); and by e-mailing a copy to the Attorney General at [ksagappealsoffice.ag.ks.gov](mailto:ksagappealsoffice.ag.ks.gov) on this 3<sup>rd</sup> day of May, 2023.

/s/ Kai Tate Mann

Kai Tate Mann #26234