



Kansas Courts News Release

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Judge Anthony J. Powell



*Judge Henry W. Green
Jr.*



Judge Daniel Hebert

Kansas Court of Appeals to hear oral arguments at Wichita Northeast Magnet High School

TOPEKA — A three-judge panel of the Kansas Court of Appeals will hear oral arguments Tuesday, February 13, at Wichita Northeast Magnet High School at 5550 N. Lycee St. in Bel Aire.

Judge Anthony J. Powell, Judge Henry W. Green Jr. and Senior Judge Daniel Hebert will hear oral arguments in six cases. Four will be heard starting at 9 a.m. with the remaining two starting at 1 p.m.

After each docket session, the judges will be available to answer questions from the public about the court and court procedures.

Powell, who is presiding judge of the panel, said the court was invited to the school because its curriculum focuses on law and public service in addition to visual arts, science, and engineering.

"We are very pleased to be sitting at the Wichita Northeast Magnet High School this month," Powell said. "I want to thank Principal Matt Creasman, as well as the staff and faculty at Northeast High, for making this special docket possible. We look forward to having the opportunity to visit with students and others about the work of our court and the role of the judiciary in our system of government."

Oral Arguments

Attorneys for each side will have an opportunity to present arguments to the judges, and the judges will have a chance to ask questions. The court will then take each case under consideration and will issue a written decision at a later date, usually within 60 days.

There are 14 judges on the Court of Appeals, and the judges sit in three-judge panels to decide cases. In addition to the Court of Appeals panel hearing cases this week in Bel Aire, other three-judge panels of the Court of Appeals will be hearing cases in Kansas City, Kan., and Topeka. All hearings are open to the public.

In fiscal year 2017, the Court of Appeals resolved appeals in 1,833 cases, including 1,265 in which the court issued a formal written opinion.

The six cases to be heard at Wichita Northeast are summarized below. They arise from Finney, Ford, Geary, Seward, and Sumner counties.

9 a.m. Tuesday, February 13, 2018

Appeal No. 117,984: *Loretta Bachan v. Armour Swift Eckrich Meats, LLC and Safety National Casualty Corporation*

Bachan fell and fractured her right hip while working at Armour Eckrich in July 2013. Bachan received immediate medical care and underwent a successful hip surgery before returning to work in November 2013. Bachan continued to experience pain due to her hip injury, however, and eventually stopped reporting to work in February 2014. Several months later, Bachan had a second hip surgery and filed a worker's compensation claim. Although the administrative law judge granted Bachan a worker's compensation award, he denied her an award for work disability because he found that she voluntarily resigned or terminated her position at Armour Eckrich when she decided to stop reporting to work. Bachan appealed to the Kansas Workers Compensation Appeals Board, which affirmed the administrative law judge's decision. Bachan appeals.

Appeal No. 117,297: *State of Kansas v. Angel Rodriguez* (originating in Seward County)

Rodriguez and the State entered into a plea agreement where Rodriguez agreed to plead guilty to sexual exploitation of a child in exchange for the State recommending that he serve the standard presumptive prison sentence. At sentencing, however, the State recommended that the court impose the aggravated

presumptive prison sentence. This prison sentence is longer than the standard presumptive prison sentence. The district court followed the State's recommendation, ordering that Rodriguez serve the aggravated presumptive prison sentence. Rodriguez appeals, arguing that the State violated his plea agreement. He also argues that his sentence is illegal because when the court calculated his criminal history score, the district court classified his prior New Jersey conviction for assault with intent to rape as a person felony instead of a nonperson misdemeanor.

Appeal No. 116,705: *John Paul Holland v. State of Kansas* (originating in Ford County)

Holland appeals the district court's dismissal of his K.S.A. 60-1507 motion. At Holland's trial during jury deliberations, the jury asked for an audio recording of an alleged drug transaction between Holland and an undercover officer to be replayed. Holland was not present when the district court judge discussed the procedure of how the recording would be replayed for the jury. This procedure consisted of the officer who was on the recording coming into the courtroom, pressing play on the audio equipment, and then exiting the courtroom while the recording played. This officer was to stand outside of the courtroom, and if the jury needed the recording rewound, then a member of the jury was to signal to the officer to re-enter the courtroom. The jury was also to signal when it was done with the recording and ready for it to be turned off. No one other than the jury and the officer were to be present in the courtroom. In Holland's 60-1507 motion, he argues that his trial counsel was ineffective by failing to ensure Holland's presence at a critical stage of the proceeding and failing to object to this audio recording playback procedure. The district court summarily denied Holland's motion without an evidentiary hearing. Holland now appeals.

Appeal No. 116,448: *State of Kansas v. Joseph A. Arellano* (originating in Finney County)

Arellano was stopped after a Kansas Highway Patrol trooper observed him commit driving infractions. His field sobriety tests showed several indicators of intoxication, and he made statements implying that he had been drinking and believed he was over the legal limit, but he declined to take a breath test. The State charged him with one count of driving under the influence and various traffic violations. Before trial, Arellano submitted a motion to suppress evidence and a motion in limine asking the court not to admit evidence of his breath test refusal. The district court denied his motions, and the evidence was presented at trial. A jury convicted Arellano of driving under the influence, improper turn, and refusal to take a breath test as a traffic infraction. Arellano appeals.

1 p.m. Tuesday, February 13, 2018

Appeal No. 115,587: *In the Matter of the Equalization Appeal of Kansas Star Casino, L.L.C. for the Year 2013 in Sumner County, Kansas*

Kansas Star Casino, L.L.C., appeals from the ruling by the district court that established a 2013 valuation for ad valorem tax purposes of \$152 million for its real property located in Sumner County. The subject property is a 195.5-acre tract of land located in the northeast corner of Sumner County, with a newly constructed 165,000-square-foot casino and a 6,200-seat multipurpose arena. The property is used primarily for casino operations. The relevant valuation date is January 1, 2013. Kansas Star argues that 1) the district court's cost approach to value contains numerous errors; and 2) the district court erred in rejecting Kansas Star's expert witness' income approach to value.

Appeal No. 116,421: *In the Matter of the Equalization Appeal of Kansas Star Casino, L.L.C. for the Year 2014 in Sumner County, Kansas*

Kansas Star Casino, L.L.C., appeals from the ruling by the Board of Tax Appeals that established a 2014 valuation for ad valorem tax purposes of \$97.6 million for its real property located in Sumner County. The relevant valuation date is January 1, 2014. The subject property is a 195.5-acre tract of land located in the northeast corner of Sumner County, with a newly constructed 165,000-square-foot casino and a 6,200-seat multipurpose arena. The property is used primarily for casino operations, but a farm lease was signed for 63.5 acres just prior to the valuation date. Kansas Star complains that BOTA erred 1) by classifying all 195.5 acres as commercial property; 2) by excluding its expert's cost approach appraisal; and 3) by rejecting both experts' appraisals and applying its own income approach. The County filed a cross-petition for review, arguing 1) BOTA's decision to reject the County's cost approach is not supported by the record and is unreasonable, arbitrary, and capricious; and 2) BOTA's income allocation approach analysis is not supported by the record and is unreasonable, arbitrary, and capricious.

Note: Reporters who want to cover the oral arguments using video, photo, or audio recording devices, as spelled out in Supreme Court Rule 1001, should contact Lisa Taylor at taylorl@kscourts.org, no later than noon Monday, February 12.

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