

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

KENNETH McNELLY,

Petitioner,

v.

CASE NO. 17-3141-SAC

SAM CLINE,

Respondent.

MEMORANDUM AND ORDER

This matter is before the Court on petitioner's second motion to alter or amend (Doc. #12), in which he seeks a correction to the background information provided in the Court's Memorandum and Order entered on November 3, 2017 (Doc. #4).

The Court has examined the decisions entered in the Kansas appellate courts<sup>1</sup> and concludes its original order contains factual information that is not adequately substantiated. Accordingly, the Court will modify its earlier order to correct the facts to conform to the factual background statements contained in the state appellate court decisions. This correction does not alter the reasoning or decision of the Court.

IT IS, THEREFORE, BY THE COURT ORDERED petitioner's motion (Doc. #12) is granted. The Clerk of the Court shall withdraw the Memorandum and Order entered on November 3, 2017 (Doc. #4) and shall enter a corrected version of that document upon the docket.

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<sup>1</sup> The Court has considered *McNelly v. State*, 302 P.3d 44 (Table), 2013 WL 2918485 (Kan. App. Jun. 7, 2013) and *State v. McNelly*, 227 P.3d 1010 (Table), 2010 WL 1253624 (Kan. App. Mar. 26, 2010). Because both decisions reflect only a single victim, the Court is persuaded its original decision should be modified in the interests of accuracy.

The Clerk of the Court shall provide a copy of this order to the Clerk of the U.S. Court of Appeals for the Tenth Circuit.

**IT IS SO ORDERED.**

DATED: This 1st day of December, 2017, at Topeka, Kansas.

S/ Sam A. Crow  
SAM A. CROW  
U.S. Senior District Judge