

## IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 21-0133

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

CHARLES ANDREW DRURY,

Defendant and Appellant.

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**STIPULATION, MOTION TO DISMISS APPEAL WITH  
PREJUDICE, AND PROPOSED ORDER FOR REMAND**

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The parties, in accordance with M. R. App. P. 16(5), stipulate and move for an order remanding this proceeding to the Nineteenth Judicial District Court, Lincoln County. Appellant Charles Andrew Drury asserts that the district court failed to award credit for time served for the five days Drury was incarcerated on a probation hold and for time served while incarcerated as sanctions while on probation prior to the revocation at issue in this appeal.

On June 24, 2019, Charles Andrew Drury (Drury) was sentenced to a two-year deferred sentence for felony partner or family member assault. He was awarded 34 days of credit for time served.

On November 25, 2020, Drury was arrested and incarcerated on a probation hold because probation alleged he possessed a firearm in violation of his conditions of supervision. On November 30, 2020, the State filed a petition to revoke alleging, in part, that Drury violated his probation by possessing a firearm. The district court issued a warrant, which was served to Drury the same day at the detention center. The petition to revoke indicated that Drury had been incarcerated on three different occasions during the pendency of his probation as sanctions. The dates of the sanctions included: June 25, 2020, October 4, 2019, and December 11, 2019. After his arrest, Drury remained incarcerated until he was re-sentenced 49 days later on January 13, 2021.

Drury's sentence was revoked, and he was awarded 78 days credit for time served. The calculation reflects the 34 days of credit from the original judgment plus 44 days from when he was served the warrant on November 30, 2020 until he was sentenced on January 13, 2021. The calculation fails to consider the 5 days he was incarcerated from

November 25–30, 2020, on the probation hold and the days Drury spent incarcerated as a result of sanctions imposed by probation.

A defendant is entitled to credit for time served “for each day of incarceration prior to or after conviction.” Mont. Code Ann. 46-18-403(1)(a). When a deferred sentence is revoked, “credit must be allowed for time served in a detention center.” Mont. Code Ann. § 46-18-203(7)(b) (2019). A district court does not have any discretion whether to award or deny credit for time served. *Id.*

The district court did not award Drury credit for the five days he served incarcerated on the probation hold from November 25–30, 2020, nor did it award him credit for the days he spent incarcerated as a result of sanctions while on probation. The district court seemed to inadvertently overlook the probation hold and calculate credit for time served based on when Drury was served the warrant at the detention center. It seemed to overlook entirely the credit for jail sanctions. As a result, the district court failed to fulfill the statutory requirements of Montana Code Annotated, § 46-18-203(7)(b).

The Attorney General’s Office, after consultation with the Lincoln County Attorney’s Office, in the interests of justice and judicial

economy, concedes under the particular facts presented in this record that the Lincoln County district court failed to award Drury the entirety of the credit he is owed for time served. The parties stipulate that the above-entitled appeal should be remanded to the district court with instructions to award Drury an additional five days credit for time served and to set a hearing to determine how many days of credit Drury is entitled to for time he spent incarcerated as the result of jail sanctions. The district must award Drury credit for each day he spent incarcerated as a result of a sanction.

Drury respectfully requests this Court include instructions to the Clerk of the District Court to send a certified copy of the second amended judgment to the Records Department of the Department of Corrections (DOC), without which the DOC will not update its records of judgment for this matter.

Counsel for Appellant has personally spoken with the Appellant about this stipulation, and the Appellant has agreed to pursue this course of action.

Appellant agrees to the voluntary dismissal of the remainder of this appeal with prejudice.

The parties jointly request the Court grant their motion and enter the proposed order.

Respectfully submitted this 27th day of May, 2022.

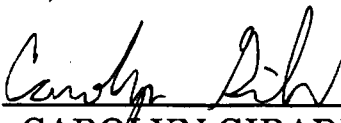
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## **CERTIFICATE OF SERVICE**

I, Carolyn Marlar Gibadlo, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 05-27-2022:

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Electronically signed by Kim Harrison on behalf of Carolyn Marlar Gibadlo  
Dated: 05-27-2022