

## IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 23-0547

SHAWN MCCULLEY,

Petitioner,

v.

CAPTAIN HASH, MISSOULA ASSESSMENT  
AND SANCTION CENTER,

Respondent.

FILED

NOV - 7 2023

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

ORDER

Appearing as a self-represented Petitioner, Shawn McCulley has filed a Petition for Writ of Habeas Corpus, claiming that he is entitled to more credit for time served than what he received. In compliance with this Court's October 4, 2023 Order, the State responds and agrees with McCulley in part.

The State provides more details about McCulley's sentencing history that we summarize here. The Seventh Judicial District Court, Prairie County, initially sentenced McCulley for felony criminal endangerment and felony partner or family member assault (PFMA), pursuant to a plea agreement, in July 2015. McCulley received an eight-year suspended term for criminal endangerment to the Department of Corrections (DOC) and a concurrent, suspended one-year jail term for PFMA. The court awarded thirty-three days of credit for time served.

A few months later, McCulley violated the terms of his suspended sentence. The District Court revoked his suspended sentences and imposed an eight-year DOC term with four years suspended as well as a concurrent suspended one-year jail term. The court gave McCulley seventy-five days of credit for time served. McCulley discharged the four-year DOC commitment on October 9, 2019.

Within a month, McCulley again violated his probationary conditions and also committed another felony PFMA, resulting in a new criminal case. The State sought

revocation. The District Court conducted a combined revocation and change of plea hearing on May 12, 2020. On June 23, 2020, in open court, the District Court revoked his suspended sentence for felony criminal endangerment and imposed a four-year sentence (sentence upon revocation). The written judgment for this sentence upon revocation did not mention the court's oral pronouncement that McCulley was not entitled to elapsed time credit or list any credit for actual time served prior to disposition. In the new case, the District Court accepted McCulley's guilty plea to PFMA and sentenced him to the DOC for a four-year term, to run concurrently with his sentence upon revocation. The court awarded ninety-nine days of credit.

McCulley asks the Court to order that the DOC recalculate his sentence. Citing Montana case law, McCulley posits that a violation of rights occurs when an offender receives credit for time served on only one concurrent sentence and not on both. *See State v. Kortan*, 2022 MT 204, 410 Mont. 336, 518 P.3d 1283. He claims he is due ninety days of credit, along with street time credit. He also indicates that his sentence violates the right to be free from double jeopardy. McCulley provides no supporting documents.

The State agrees that McCulley is entitled to credit for time served against his sentence upon revocation but contends that he is not entitled to elapsed time credit. The State points out that, though it sought revocation on December 12, 2019, the State did not request a bench warrant for McCulley. McCulley was arrested on March 26, 2020, following his absconding from supervision and the court's issuance of a bench warrant. The State calculates that McCulley remained incarcerated for ninety days from March 26 until the June 24, 2020 dispositional hearing.<sup>1</sup>

The State posits that McCulley is not entitled to any credit for street time or elapsed time because he consistently violated his probationary conditions, beginning in October 2019 until his arrest. The State points out that McCulley has not met his burden to

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<sup>1</sup> The State provides that the court's dispositional hearing occurred on June 24, 2020, as stated incorrectly in the written judgments for both of McCulley's sentences imposed in 2020; as reflected in the minute entry, however, the court held the sentencing hearings on June 23, 2020; this date also is noted at the end of the judgments and in the court's register of actions. Judge Rieger signed the documents on June 24, and the documents were filed the next day.

demonstrate that the District Court should have awarded him credit, pursuant to § 46-18-203(7)(b), MCA. The State points to the June 2020 minute entry where the court stated that no street time would be given “based [upon] the papers received in the court.”

This Court agrees with the State’s response to McCulley’s Petition. McCulley is entitled to credit for jail time served but not for street time. We conclude, however, that McCulley is entitled to eighty-nine, not ninety, days from the March 26, 2020 date of his arrest until the June 23, 2020 sentencing date. Finally, McCulley’s sentence upon revocation does not violate his right to be free from double jeopardy. *See State v. Dewitt*, 2006 MT 302, ¶ 10, 334 Mont. 474, 149 P.3d 549 (“[R]evocation of a suspended sentence based upon violations of probationary conditions and reinstatement of the original sentence does not violate a person’s constitutional rights against double jeopardy[.]”).

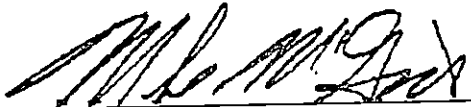
Based on the foregoing, we conclude that it is appropriate to remand the matter to the Prairie County District Court for amendment of its Judgment and Sentencing Order. *See State v. Heafner*, 2010 MT 87, ¶ 11, 356 Mont. 128, 231 P.3d 1087.

IT IS THEREFORE ORDERED that McCulley’s Petition for Writ of Habeas Corpus is GRANTED in part and his underlying matter is REMANDED to the Seventh Judicial District Court, Prairie County, to amend the June 25, 2020 Judgment and Sentencing Order to reflect eighty-nine (89) days of credit for time served.

IT IS FURTHER ORDERED that McCulley’s other claims are DENIED and DISMISSED.

The Clerk of the Supreme Court is directed to provide a copy of this Order to: the Honorable Olivia Rieger, District Court Judge; Shari Robertson, Clerk of District Court, Prairie County, under Cause No. DC-14-03; counsel of record, and Shawn McCulley personally.

DATED this 7<sup>th</sup> day of November, 2023.

  
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Chief Justice

Robert Brown

James Jeremiah Brown

August Wright

Oct M. Little

Justices