
STATE OF MONTANA,

Plaintiff and Appellee,

v.

ADRIAN ABELARDO GARCIA,

Defendant and Appellant.

BRIEF OF APPELLANT

On Appeal from the Montana Eighth Judicial District Court,
Cascade County, the Honorable David Grubich, Presiding

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§ 46-18-2015, 9

STATEMENT OF THE ISSUES

I. Did the Cascade County District Court impose an illegal sentence when it awarded Adrian Garcia 422 days of credit for time served when the record establishes that he sat in jail for 477 days on the Cascade County charges?

II. Alternatively, did defense counsel provide constitutionally ineffective assistance when he informed the court that Adrian Garcia was entitled to 422 days of credit for time served when the record establishes the correct number was 477?

STATEMENT OF THE CASE

On September 4, 2020, Adrian Garcia was arrested on several charges stemming from a traffic incident in Cascade County. (D.C. Docs. 2, 6.) Adrian spent the following 18 months in and out of jail on the charges until he ultimately pled guilty to one count of assault on a peace officer. (D.C. Docs. 25, 27–28, 30, 33, 52; 3/14/22 Tr. at 75.) By the time sentencing occurred on May 25, 2022, Adrian had sat in jail on the Cascade County charges for a total of 477 days. (See D.C. Docs. 25, 27–28, 30, 33, 52, 115, 121, 131.) The court sentenced Adrian to the Department of Corrections (“DOC”) for six years with two years

suspended and awarded him only 422 days of credit for time served. (5/25/22 Tr. at 113, attached as App. A; D.C. Doc. 140 at 2, attached as App. B.)

Adrian timely appealed to this Court. (D.C. Doc. 146.)

STATEMENT OF THE FACTS

Following Adrian's September 4, 2020 arrest, the court set bond and imposed various conditions of release. (D.C. Docs. 6, 7, 24.) On March 16, 2021, Adrian posted bond. (D.C. Doc. 25.) A few weeks later, the State successfully moved to revoke Adrian's bond for allegedly violating his conditions. (D.C. Docs. 27–28.) The court issued a warrant, and Adrian was arrested on April 20, 2021. (D.C. Docs. 29–30.) Nine days later, Adrian posted bond. (D.C. Doc. 33.)

On August 5, 2021, the State once again moved to revoke Adrian's bond for violating conditions. (D.C. Doc. 49.) The court granted the motion, and Adrian was arrested on August 13, 2021. (D.C. Docs. 50–52.) Adrian remained detained until his change of plea hearing on March 14, 2022. (D.C. Doc. 115.) After pleading guilty, the court ordered Adrian's release. (D.C. Doc. 115.) Adrian was released a few days later on March 17, 2022, but arrested again on March 31, 2022. (D.C. Docs.

121, 131.) Adrian remained incarcerated until his sentencing on May 25, 2022. (See D.C. Docs. 131–38.)

Other than the initial period of incarceration following Adrian’s arrest, the presentence investigation report was silent on the amount of time Adrian spent detained on his charges. (D.C. Doc. 135.) At sentencing, Adrian’s counsel informed the court that he believed Adrian was entitled to “roughly 400 days” of credit for time served. (5/25/22 Tr. at 84.) When the court asked for an exact number, the parties agreed it was 422 days. (5/25/22 Tr. at 84, 97, 104.) The court awarded Adrian 422 days of credit for time served. (5/25/22 Tr. at 113; D.C. Doc. 140 at 2.)

SUMMARY OF THE ARGUMENT

The district court and Adrian’s defense counsel deprived Adrian of credit to which he was legally due. Calculating credit for time served “is not a discretionary act, but a legal mandate.” *State v. Parks*, 2019 MT 252, ¶ 9, 397 Mont. 408, 450 P.3d 889 (quotation omitted). The record establishes that Adrian was detained for 477 days on the Cascade County charges. The record also establishes that Adrian’s counsel, the State, and the court were unaware of this fact. Ignorance does not justify an illegal

sentence. The court’s failure to award Adrian credit for every day he sat in jail—and defense counsel’s ineffectiveness in requesting the incorrect amount of days—deprived Adrian of 55 days to which he was legally entitled. This Court must reverse the award of credit and remand with instructions for the district court to award Adrian 477 days of credit for time served.

STANDARDS OF REVIEW

This Court reviews a district court’s sentence for legality. *State v. Mendoza*, 2021 MT 197, ¶ 8, 405 Mont. 154, 492 P.3d 509. “A sentence is legal if it falls within the parameters set by applicable sentencing statutes and if the sentencing court adheres to the affirmative mandates of those statutes.” *Mendoza*, ¶ 8.

Ineffective assistance of counsel is a mixed question of law and fact reviewed de novo. *State v. Kougl*, 2004 MT 243, ¶ 12, 323 Mont. 6, 97 P.3d 1095. On direct appeal, this Court will review a claim of ineffective assistance of counsel when there could be no legitimate reason for counsel’s performance. *Kougl*, ¶¶ 14–15.

ARGUMENT

I. The district court imposed an illegal sentence when it failed to award Adrian credit for the entire 477 days that he sat in jail on the Cascade County charges.

“Pre-conviction jail time credit toward a sentence granted by statute is a matter of right.” *Killam v. Salmonsens*, 2021 MT 196, ¶ 18, 405 Mont. 143, 492 P.3d 512 (quotation omitted). Under Mont. Code Ann. § 46-18-201(9), “When imposing a sentence under this section that includes incarceration in a detention facility or the state prison, as defined in 53-30-101, the court shall provide credit for time served by the offender before trial or sentencing.” The *Killam* Court emphasized that credit for time served “is based solely on the record of the offense for which the defendant is being sentenced.” *Killam*, ¶ 16.

The record in Adrian’s case establishes that he sat in jail for a total of 477 days on the Cascade County charges. Below is a chart documenting the periods of detainment:

| Arrest Date | Release Date | Days Detained |
|--------------------|---------------------------|----------------------|
| September 4, 2020 | March 16, 2021 | 194 |
| April 20, 2021 | April 29, 2021 | 10 |
| August 13, 2021 | March 17, 2022 | 217 |
| March 31, 2022 | May 25, 2022 (sentencing) | 56 |

TOTAL: 477 days

The district court illegally deprived Adrian of 55 days of credit for time served when it only gave him 422 days. Notably, it does not matter that Adrian’s counsel agreed to 422 days of credit when it should have been 477. Even with no objection below, this Court will review an appellate challenge to incorrect credit under *State v. Lenihan*, 184 Mont. 338, 602 P.2d 997 (1979). Under *Lenihan*, this Court will review unpreserved claims on appeal when the defendant alleges the sentence is illegal or exceeds statutory mandates. *State v. Erickson*, 2005 MT 276, ¶ 27, 329 Mont. 192, 124 P.3d 119 (quotation omitted). In *Erickson*, this Court considered a challenge to credit on appeal even though defense counsel agreed to the alleged error below. *Erickson*, ¶¶ 18, 27. Because a court “must” award credit, and its failure to do so violates statutory mandates, the Court applied *Lenihan* and reviewed the issue on appeal notwithstanding defense counsel’s acquiescence in district court. *Erickson*, ¶¶ 18, 27. See also *City of Kalispell v. Salsgiver*, 2019 MT 126, ¶¶ 42, 45, 396 Mont. 55, 443 P.3d 504 (holding that a party cannot actively acquiesce to a court imposing an illegal sentence); *State v. Souther*, 2022 MT 203, ¶ 12, 410 Mont. 330, 519 P.3d 1 (holding that a challenge to incorrect credit for time served is premised on an argument

that the sentence exceeds statutory mandates and is illegal, rendering the issue reviewable under *Lenihan*); *State v. Kortan*, 2022 MT 204, ¶¶ 10, 21, 410 Mont. 336, 518 P.3d 1283 (holding that failure to award credit for time served violates statutory mandates and constitutes an illegal sentence).

Here, as in *Erickson*, “it is not fatal to [Adrian’s] appeal” that defense counsel did not object to the court awarding 422 days of credit when the correct amount was 477 days. *Erickson*, ¶ 27. The record reveals that Adrian’s attorney was ignorant of the correct number of days that Adrian spent incarcerated while the case was pending. He first told the court he thought it was “roughly 400 days,” and then later agreed with the State that it was 422 days. (5/25/22 Tr. at 84.) Defense counsel was 55 days off—that is 55 days that Adrian will have to sit in prison when the law says he should be out. Consistent with *Erickson*, this Court should review Adrian’s appellate challenge to his illegal sentence notwithstanding defense counsel’s failure to preserve the issue below.

The district court had a “legal mandate” to award Adrian credit for the 477 days he spent incarcerated on the Cascade County charges. *State v. Hornstein*, 2010 MT 75, ¶ 12, 356 Mont. 14, 229 P.3d 1206. The court

imposed an illegal sentence when it failed to do so. This Court should reverse the credit and remand with instructions to give Adrian an additional 55 days to which he was legally entitled.

II. Alternatively, defense counsel rendered constitutionally ineffective assistance when he told the court that Adrian spent 422 days in pretrial detention when it was actually 477 days.

The accused has a constitutional right to effective assistance of counsel in criminal prosecutions. *State v. Johnston*, 2010 MT 152, ¶ 15, 355 Mont. 46, 237 P.3d 70. This Court applies the two-part test from *Strickland v. Washington*, 466 U.S. 668 (1984), in evaluating ineffective assistance of counsel claims. *Johnston*, ¶ 15. A defendant must demonstrate “(1) that counsel’s representation was deficient and (2) that counsel’s deficiency was prejudicial by establishing that there was a reasonable probability that, but for counsel’s errors, the result of the proceeding would have been different.” *Johnston*, ¶ 15. This Court will consider the claim on direct appeal where the record reveals counsel’s reasons or where there is no legitimate reason for what counsel did or did not do. *Kougl*, ¶¶ 14–15.

If, contrary to Adrian’s argument, this Court refuses to consider Adrian’s challenge to credit because defense counsel agreed to the

incorrect amount below, reversal remains necessary due to counsel's ineffective assistance. Credit is not discretionary. Per Mont. Code Ann. § 46-18-201(9), a court "must give credit for pre-trial or pre-sentencing incarceration." *Killam*, ¶ 9. Counsel's failure to ensure the court awarded Adrian all the credit to which he was legally entitled constituted deficient representation. Had defense counsel reviewed the record and asked for the correct amount of credit, the court would have been legally required to award it. Mont. Code Ann. § 46-18-201(9); *Killam*, ¶ 9. Counsel's deficient conduct thus prejudiced Adrian by depriving him of nearly two months of credit to which he was legally entitled.

Adrian's ineffective assistance of counsel claim is reviewable on appeal because the record reveals the reason for counsel's error—he was simply ignorant of how many days Adrian had been detained. At the May 25, 2022 sentencing hearing, defense counsel first gave the court a "rough" estimate of 400 days based on what he believed to be owed as of the date of the March 14, 2022 change of plea hearing. (5/25/22 Tr. at 84 ("I had, you know, roughly 400 days, which is a lot closer, which is in line with the 13 months that we had at the time [of the change of plea hearing], Your Honor.")) When the court recognized it was "important"

that it award the “exact number of days,” defense counsel acknowledged the court had to “take into account the most recent incarceration,” which were the days between the change of plea and sentencing hearings. (5/25/22 Tr. at 84.) Defense counsel then immediately stipulated to 422 days. (5/25/22 Tr. at 84.) But the record establishes the correct number is 477. Even if there is any uncertainty as to *why* counsel agreed to 422 days of credit, this Court should review the issue on appeal because there was no legitimate reason to deprive Adrian of 55 days of credit to which he was legally entitled. *See Kougl*, ¶ 15.

Adrian had the right to rely on his attorney at sentencing to argue for the correct number of days of credit. His attorney failed to fulfill this duty. Counsel’s performance was deficient, prejudicial, and ineffective.

CONCLUSION

The law imposes an independent and non-waivable obligation on courts to calculate and award the correct amount of credit for time served. The court’s failure to do so resulted in an illegal sentence that deprived Adrian of 55 days of credit that he was legally due. The court should reverse this illegal sentence. Alternatively, the Court should reverse on the basis that Adrian’s counsel was ineffective for failing to request the

correct amount of credit. In either event, this case should be remanded for entry of an amended judgment awarding Adrian full credit for each of the 477 days he was detained on the Cascade County charges.

Respectfully submitted this 1st day of December, 2023.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this primary brief is printed with a proportionately spaced Century Schoolbook text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 2,148, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Haley Connell Jackson
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APPENDIX

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CERTIFICATE OF SERVICE

I, Haley Connell Jackson, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 12-01-2023:

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