

STATE OF MONTANA,

Plaintiff and Appellee,

v.

TYRONE LEE RISHER,

Defendant and Appellant.

BRIEF OF APPELLANT

On Appeal from the Montana Third Judicial District Court,
Powell County, the Honorable Ray J. Dayton, Presiding

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STATEMENT OF THE ISSUE

The court shall provide credit for time served by the offender before sentencing when imposing a new sentence that includes incarceration. Risher remained in jail from his initial appearance through his sentencing hearing. Did the court err when it refused to give Risher credit for the time he served before being sentenced?

STATEMENT OF THE CASE

Tyrone Risher appeals his criminal sentence from Powell County.

The State charged Risher with Escape, a felony, in violation of Montana Code Annotated § 45-7-306 (2021). (Doc. 1.) The court found him guilty after a bench trial and sentenced Risher to the Department of Corrections (DOC) for 30 months, consecutive to any preexisting sentence, and denied any credit for time served. (Doc. 39 at 2, Judgment, attached as Appendix A.) Risher timely appealed. (Doc. 41.)

STATEMENT OF THE FACTS

Risher left the Butte Pre-Release Center on February 18, 2022, for a work shift at the Montana Club and failed to return as required. (Doc. 1 at 3–4.) Risher was a DOC inmate serving a preexisting sentence at the time. (Doc. 1 at 3.) The State filed a Complaint on February 22,

2022, charging Risher with Escape; the Powell County Justice Court issued a warrant for Risher's arrest the same day. (Doc. 1 at 3–5.)

On April 29, 2022, Probation & Parole Officer Kylee Waldorph issued a field warrant for Risher's arrest. (Doc. 27, Exhibit 1 at 2.) Law enforcement found Risher at a residence in Butte that same day, arrested him on the DOC's field warrant, and took him to the Silver Bow County Jail. (Doc. 27, Exhibit 1 at 2.) On May 24, 2022, the Powell County Justice Court held an initial appearance for Risher on the Escape charge. (Doc. 1.) The Powell County Justice Court warrant was provided to Risher "after he was arraigned by the Powell [County] Justice Court." (Doc. 27 at 3.)

The case proceeded into district court, which held a bench trial. (Doc. 39.) Risher remained incarcerated throughout the pendency of the case. (4-25-23 Sentencing Tr. at 17.) The court found Risher guilty of Escape and set a sentencing hearing for April 25, 2023. (Doc. 39 at 1–2.)

Risher requested credit for time served, "from the time of arrest, but at the very least . . . from May 24th[, 2022,] until today[, April 25, 2023]." (4-25-23 Sentencing Tr. at 17.) The court imposed a DOC commitment of 30 months consecutive to any preexisting sentences. (4-

25-23 Sentencing Tr. at 22.) Based on the court’s interpretation of the law and the consecutive nature of the sentence, it denied credit for time served. (4-25-23 Sentencing Tr. at 23.)

STANDARD OF REVIEW

A lower court’s statutory interpretation is reviewed for correctness. *State v. Crazy mule*, 2024 MT 58, ¶ 8, 415 Mont. 536, 545 P.3d 66. Calculating credit for time served is not a discretionary act, but a legal mandate reviewed de novo. *Crazy mule*, ¶ 8, (citing *State v. Pennington*, 2022 MT 180, ¶ 18, 410 Mont. 104, 517 P.3d 894.)

SUMMARY OF THE ARGUMENT

Risher served 336 days in jail—from his initial appearance to his sentencing date—but never got credit for it. Montana law requires he receive credit for each day of incarceration prior to his conviction even if he was also serving a preexisting sentence. The judgment should be corrected to credit 336 days Risher already served.

ARGUMENT

I. Risher must receive credit for the 336 days he served in jail before being sentenced.

Pre-conviction jail time credit toward a sentence granted by statute is a matter of right. *State v. Hornstein*, 2010 MT 75, ¶ 12, 356

Mont. 14, 229 P.3d 1206. A sentence that fails to award the proper amount of credit for time served violates statutory mandates and is subject to appellate review, even absent an objection. *Killam v.*

Salmonsens, 2021 MT 196, ¶ 12, 405 Mont. 143, 492 P.3d 512; *State v.*

Erickson, 2005 MT 276, ¶ 27, 329 Mont. 192, 124 P.3d 119; *State v.*

Lenihan, 184 Mont. 338, 602 P.2d 997, 1000 (1979).

Montana Code Annotated § 46-18-201(9) provides:

When imposing a sentence under this section that includes incarceration in a detention facility or the state prison, . . . the court shall provide credit for time served by the offender before trial or sentencing.

The language of § 46-18-201(9) is clear and unambiguous and makes the determination of credit for time served straightforward. *Killam*,

¶ 17. “If the language is clear and unambiguous, no further

interpretation is required.” *Ravalli Co. v. Erickson*, 2004 MT 35, ¶ 11,

320 Mont. 31, 85 P.3d 772. “[C]ourts are bound by a statute’s plain

meaning. *Deschamps v. Mont. Twenty-First Jud. Dist. Ct.*, 2024 MT 15,

¶ 18, 415 Mont. 94, 542 P.3d 392 (citing Mont. Code Ann. § 1-2-101).

Credit for time served must be granted even if the defendant is being held on another matter. *State v. Spagnolo*, 2022 MT 228, ¶ 9, 410 Mont. 457, 520 P.3d 330 (citing *Killam*, ¶ 17). Under § 46-18-201(9),

“the court must determine the amount of time to credit based on the record relating to the offense for which the defendant is being sentenced on without considering other criminal proceedings or DOC incarcerations or holds.” *Killam*, ¶ 17. Section 46-18-201(9) “provides that upon sentencing, the court *shall* provide credit for time served by the defendant before trial or sentencing *even if* the defendant would *not* have been released from custody pre-trial/sentencing had s/he been able to post bond.” *Killam*, ¶ 17 (emphasis in original).

Section 46-18-201(9) “requires sentencing courts to give offenders credit for time served prior to their sentencing regardless of what constitutes ‘a bailable offense’ because the statute is unqualified.” *Spagnolo*, ¶ 7, (citing *Killam*, ¶ 17); *see also* Mont. Code Ann. § 46-18-403(1) (source of term “bailable offense”). Prior to the enactment of § 46-18-201(9), the credit-for-time-served analysis required a determination whether a defendant was “incarcerated on a bailable offense[.]” which had proven confusing and difficult for sentencing courts. *Killam*, ¶ 15. Section 46-18-201(9) simplifies the sentencing court’s determination of credit for time served by requiring courts to only refer to the record of the case for which it is imposing sentence. *Killam*, ¶ 18. This is

consistent with legislative sentencing policy providing courts discretion to determine length of sentence and whether sentences should be imposed concurrently or consecutively. *Killam*, ¶ 18.

Thus, based on § 46-18-201(9), *Killam*, and subsequent cases affirming *Killam*, Risher is entitled to credit for time served prior to sentencing in this case. See *State v. Mendoza*, 2021 MT 197, ¶ 11, 405 Mont. 154, 492 P.3d 509; *Spagnolo*, ¶ 15; *State v. Pitkanen*, 2022 MT 231, ¶ 25, 410 Mont. 503, 520 P.3d 305; *Crazymule*, ¶ 11.

Based on the record in Risher's case, he should be credited for time served from his initial appearance in Powell County Justice Court on May 24, 2022, to his sentencing date, April 25, 2023—a total of 336 days. The record shows Risher was in custody through this entire span. It does not matter that Risher was held as a DOC inmate at the time. It does not matter that he would not have been released had he been able to post bond. Nor does it matter that Risher was not served with an arrest warrant and bond set at the initial appearance. None of these are required conditions in order to receive credit under § 46-18-201(9), which is unqualified. Therefore, Risher must receive credit for the time he served prior to sentencing.

CONCLUSION

Risher respectfully requests the Court remand this matter with instructions to amend the judgment granting 336 days credit toward the sentence.

Respectfully submitted this 11th day of June, 2024.

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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 1,312, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Jeff N. Wilson
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APPENDIX

Judgment.....App. A

CERTIFICATE OF SERVICE

I, Jeff N. Wilson, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 06-11-2024:

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