

STATE OF MONTANA,

Plaintiff and Appellee,

v.

TOMMY LANE CURRIER,

Defendant and Appellant.

BRIEF OF APPELLANT

On Appeal from the Montana Nineteenth Judicial District Court,
Lincoln County, the Honorable Matthew J. Cuffe, Presiding

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TABLE OF CONTENTS

TABLE OF CONTENTSi

TABLE OF AUTHORITIES.....ii

STATEMENT OF THE ISSUE..... 1

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS3

STANDARDS OF REVIEW6

SUMMARY OF THE ARGUMENT 7

ARGUMENT 7

Tommy Currier’s judgment is illegal because it fails to grant him credit for all the time he served in jail and treatment-court-ordered residential treatment before he was sentenced. 7

CONCLUSION.....9

CERTIFICATE OF COMPLIANCE..... 11

APPENDIX..... 12

TABLE OF AUTHORITIES

Cases

<i>State v. Byrd</i> , 2015 MT 20, 378 Mont. 94, 342 P.3d 9.....	8
<i>State v. Pennington</i> , 2022 MT 180, 410 Mont. 104, 517 P.3d 894.....	6
<i>State v. Souther</i> , 2022 MT 203, 410 Mont. 330, 519 P.3d 1.....	7

Statutes

Mont. Code Ann. § 45-9-102.....	1
Mont. Code Ann. § 45-10-103.....	1
Mont. Code Ann. § 46-18-403(1).....	8
Mont. Code Ann. § 46-18-403(1)(a).....	7
Mont. Code Ann. § 46-18-403(1)(b).....	7, 8
Mont. Code Ann. § 61-8-401.....	1

Regulations

Mont. Admin. R. 37.27.701.....	5
Mont. Admin. R. 37.27.710.....	5

Laws

2021 Mont. L. Ch. 283, § 1.....	8
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STATEMENT OF THE ISSUE

Tommy Currier served 94 days in jail and court-ordered residential treatment before he was sentenced. The order for deferred imposition of sentence grants Mr. Currier 77 days of credit for time served before sentencing. Should the Court grant Mr. Currier the remaining 17 days of credit for time served to which he is statutorily entitled?

STATEMENT OF THE CASE

The State charged Tommy Lane Currier with: Count I, criminal possession of dangerous drugs, a felony, in violation of Mont. Code Ann. § 45-9-102; Count II, Criminal Possession of Drug Paraphernalia, a misdemeanor, in violation of Mont. Code Ann. § 45-10-103; and Count III, driving under the influence of alcohol or drugs, a misdemeanor, in violation of Mont. Code Ann. § 61-8-401 (2019). (Docs. 1-4.)

Subsequently, the parties entered into a pretrial diversion agreement allowing Mr. Currier to enter treatment court. (Tr. at 7-10. Doc. 17.)

Due to alleged violations of the agreement, the State petitioned to terminate Mr. Currier from treatment court and moved to revoke his release on pretrial supervision. (Docs. 27-28, 33-34.) The District Court

revoked Mr. Currier's supervised release. (Docs. 29-30.) Mr. Currier was taken into custody that same day. (Doc. 32.) Following an evidentiary hearing, the District Court terminated Mr. Currier from treatment court. (Tr. at 11-31. Doc. 39.)

Before trial, the District Court dismissed Count III on the State's motion. (Docs. 74, 76.) At the end of a two-day jury trial, a jury found Mr. Currier guilty of Counts I and II. (Doc. 83.)

At sentencing, the District Court ordered a five-year deferred imposition of sentence with an initial placement in the Nexus program followed by prerelease, in addition to financial obligations, which Mr. Currier indicated he could pay on a monthly schedule. (Tr. at 406-07, attached hereto as App. A.) The oral pronouncement did not specify separate sentences for Counts I and II. The District Court granted Mr. Currier credit for time served against his sentence, directing the parties to determine the appropriate amount of credit. (App. A at 407.)

The sentencing order clarifies the sentences for Counts I and II run concurrently and grants Mr. Currier 77 days credit for time served against his sentence. (Doc. 94, attached hereto as App. B, at 2.) The record on appeal does not indicate how the parties arrived at the 77

days of credit granted in the sentencing order. The record does reveal, however, that Mr. Currier was either incarcerated or in court-ordered residential treatment for 94 days. (Docs. 5, 10, 24, 25, 39, 42. Tr. at 17.)

Mr. Currier timely appealed.

STATEMENT OF THE FACTS

Tommy Currier's car broke down in the middle of rural road in Lincoln County. (Tr. at 227-29, 234-36.) Mr. Currier left the car in the road and climbed a nearby tree. (Tr. at 235.) A local resident called the sheriff's office to report what she thought was an abandoned vehicle in the road that was blocking mailboxes. (Tr. at 227-28.) Deputy Andrew Smith and Undersheriff Dodson responded to the call. (Tr. at 233.) Smith and Dodson observed the car parked in the road, and as they were walking toward it to investigate if it was abandoned, Mr. Currier called out, "That's my car." (Tr. at 234-35.)

Mr. Currier climbed down from the tree to speak with the officers. Smith believed Mr. Currier might be under the influence of a stimulant. (Tr. at 236. Exh. 5.¹) Dodson conducted a DUI investigation with

¹ Exhibit 5 offered and admitted, Tr. at 239.

which Mr. Currier complied, leading to Mr. Currier's arrest at the scene. (Tr. at 242.) Dodson searched Mr. Currier incident to the arrest and discovered a "[s]mall Ziploc bag containing a crystal like substance and a syringe loaded with an unknown liquid" in Mr. Currier's pockets. (Tr. at 242-43. Exh. 6.²) The baggie tested positive for methamphetamine residue. (Tr. at 206-08, 246. Exh's. 2, 3, 4.³) The liquid in the syringe was not tested. (Tr. at 216-17.)

Mr. Currier was jailed that same day, April 21, 2021. (Doc. 0.5, Justice Court Record – Notice to Appear and Complaint, Warrantless Arrest Probable Cause Statement.) At his arraignment in District Court on May 10, 2021, Mr. Currier was released on his personal recognizance subject to conditions. (Doc. 10.) On August 30, 2021, the State and Mr. Currier signed a pretrial diversion agreement requiring Mr. Currier to enter treatment court and comply with court-ordered conditions. (Doc. 17 at 2-3. Tr. at 7-8.) On October 1, 2021, the State petitioned to revoke Mr. Currier's supervised release and requested a bench warrant for his arrest, due to an alleged violation of a condition of

² Exhibit 6 offered and admitted, Tr. at 244.

³ Exhibits 2 and 3 offered and admitted, Tr. at 200-01. Exhibit 4 offered and admitted, Tr. at 207.

his release. (Docs. 20, 21.) That same day, the District Court revoked Mr. Currier's supervised release and issued a bench warrant, which was served on him in jail. (Docs. 22-24.)

Mr. Currier remained incarcerated until October 8, 2021, when he was taken to the Montana Chemical Dependency Center ("MCDC")⁴ based on a court order for residential treatment. He remained at MCDC through November 11, 2021. (Docs. 25-26, 39 at 1. Tr. at 14-15.) Upon release from MCDC, Mr. Currier had difficulty complying with his supervised release conditions. In April 2022, Mr. Currier was given a three-day jail sanction due to drug use. (Tr. at 15-17.) On May 24,

⁴ MCDC "provides intensive in-patient treatment that cares for the disease of addiction" through "the highest level or most intense level of treatment for addictions in the health care continuum funded by the state of Montana." Montana Chemical Dependency Center, Montana Department of Health and Human Services, <https://dphhs.mt.gov/healthcarefacilities/mcdc/index> (last accessed January 31, 2025). *Accord* Mont. Admin. R. 37.27.701 (MCDC "is an approved public inpatient facility which provides inpatient (free standing) treatment to chemically dependent residents of Montana who demonstrate a severity of illness which matches the intensity of service"), 37.27.710 (providing for criminal justice system referrals).

2022, Mr. Currier was arrested for drug use and taken to jail. (Docs. 27-30, 32. Tr. at 17.)

On June 3, 2022, the State petitioned to terminate Mr. Currier from treatment court. (Docs. 33-34.) Following an evidentiary hearing, the District Court granted the State's petition, terminating Mr. Currier's participation in treatment court. (Doc. 39; Tr. at 11-31.) Mr. Currier remained in jail through June 22, 2022, when he was released on bond. (Doc. 42.) Mr. Currier remained out of jail until he was remanded to custody of the Department of Corrections at the end of his sentencing hearing on February 2, 2023. (Tr. at 409.)

STANDARDS OF REVIEW

“Calculating credit for time served is not a discretionary act, but a legal mandate.” *State v. Pennington*, 2022 MT 180, ¶ 18, 410 Mont. 104, 517 P.3d 894. “As such, a lower court's determination of credit for time served is reviewed for legality,” and the Court exercises de novo review. *Pennington*, ¶ 18. The Court reviews issues of statutory interpretation to determine whether the district court was correct. *Pennington*, ¶ 17. The legality of a sentence, which includes claims that a defendant has not received the proper amount of credit, may be

reviewed on appeal without an objection in district court. *State v. Souther*, 2022 MT 203, ¶ 12, 410 Mont. 330, 519 P.3d 1 (citation omitted).

SUMMARY OF THE ARGUMENT

The District Court failed to grant Tommy Currier credit for the total number of days he served in jail or court-ordered residential treatment before he was sentenced. The order for deferred imposition of sentence grants Mr. Currier only 77 days of credit for time served. The record demonstrates he is entitled to 94 days of credit for time served. The Court should remand the sentencing order with instructions to increase Mr. Currier’s credit for time served to 94 days.

ARGUMENT

Tommy Currier’s judgment is illegal because it fails to grant him credit for all the time he served in jail and treatment-court-ordered residential treatment before he was sentenced.

“A person incarcerated on a bailable offense against whom a judgment of imprisonment is rendered must be allowed credit for each day of incarceration prior to or after conviction[.] . . . [I]ncarceration includes time spent in a residential treatment facility under the order of a court.” Mont. Code Ann. § 46-18-403(1)(a), (b).

The 2021 Legislature amended Mont. Code Ann. § 46-18-403(1) to specify that this credit must include time spent in residential treatment. 2021 Mont. Laws, ch. 283, § 1. Prior to the 2021 amendment, this Court had explained “the legislature apparently does not deem a treatment facility to be a place of incarceration.” *State v. Byrd*, 2015 MT 20, ¶ 18, 378 Mont. 94, 342 P.3d 9. By enacting Mont. Code Ann. § 46-18-403(1)(b), the Legislature plainly sought to facilitate and encourage a defendant’s participation in residential treatment and recognize the restrictive aspects of such treatment.

Here, the record demonstrates Mr. Currier was either incarcerated in jail or in court-ordered residential treatment at MCDC for the following days (all dates inclusive):

04/21/2021 – 05/10/2021 (19 days, Lincoln County jail (Docs. 0.5, 10).)

10/01/2021 – 10/07/2021 (7 days, Lincoln County jail; (Doc. 24).)

10/08/2021 – 11/11/2021 (35 days, MCDC (Tr. at 14-15; Docs. 25, 26).)

04/08/2022 – 04/10/2022 (3 days, Lincoln County jail (Tr. at 17).)

05/24/2022 – 06/22/2022 (30 days, Lincoln County jail (Tr. at 17; Docs. 32, 42).)

Thus, the total period of incarceration Mr. Currier served before he was sentenced was 94 days. The sentencing order erroneously grants credit for only 77 days and lacks any support for that number of days.

This Court should reverse the judgment to the extent it denies Mr. Currier the full amount of his credit for time served. The Court should remand with instructions to strike 77 days and insert 94 days of credit for time served on page 2, ¶ 3, of the Order for Deferred Imposition of Sentence. (App. B at 2, ¶ 3.)

CONCLUSION

For the foregoing reasons, Tommy Currier requests the Court to reverse and remand with instructions to amend the judgment by increasing his credit for time served from 77 days to 94 days.

Respectfully submitted this 26th day of February, 2025.

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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 1,727, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Deborah S. Smith
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APPENDIX

Oral Pronouncement of Sentence.....App. A

Order for Deferred Imposition of Sentence.....App. B

CERTIFICATE OF SERVICE

I, Deborah Susan Smith, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 02-26-2025:

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