

No. DA 23-0583, 23-0585

STATE OF MONTANA,

Plaintiff and Appellee,

v.

TAYLOR JAY DAMM,

Defendant and Appellant.

BRIEF OF APPELLANT

On Appeal from the Montana Eleventh Judicial District Court,
Flathead County, the Honorable Heidi J. Ulbricht, Presiding

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STATEMENT OF THE ISSUES

- I. Did the district court impose an illegal revocation sentence on Taylor Jay Damm when it failed to grant him credit for each day he served in detention?
- II. Did the district court impose an illegal sentence on Taylor when it failed to grant him full credit for elapsed time served during his deferred sentences?
- III. Should the district court have granted Taylor credit for his completion of a probation sanction—90 days of inpatient substance abuse treatment—in the form of time served or elapsed time served?

STATEMENT OF THE CASE

Taylor entered nolo contendere pleas to two charges of criminal mischief pursuant to a global plea agreement. (DC-17-445 Doc. 40; DC-18-39 Doc. 13; DC-18-39 Doc. 14 (plea agreement).)¹ On August 2, 2018, the district court held a joint sentencing hearing and imposed two concurrent 5-year deferred sentences. (DC-17-445 Doc. 45.) In the written judgments filed in both cases, the district court stated: “The

¹ For purposes of this consolidated appeal, when the same document appears in both cases’ district court records, this brief generally will cite to the document number in Cause No. DC-17-445.

Defendant is to be given credit for twenty-two (22) days served in custody pending final disposition in this matter.” (DC-17-445 Doc. 45 at 6; DC-18-39 Doc. 19 at 6.) (*But see* DC-17-445 Doc. 43 at 1, 4 (documenting 22 days served in DC-17-445 and 0 days served in DC-18-39).)

Nearly five years later, the district court revoked Taylor’s deferred sentences. (DC-17-445 Doc. 66, attached hereto as Appendix A; DC-18-39 Doc. 40, attached hereto as Appendix B.) The district court committed Taylor to the custody of the Department of Corrections for five years in both cases, with the sentences to run concurrently. (App. A at 1; App. B at 1.) The court awarded him credit for 114 days served in custody “pending final disposition in this matter” and 37 months of credit for elapsed time served. (App. A at 2; App. B at 2.)

Taylor timely appealed in each cause number. (DC-17-445 Doc. 67; DC-18-39 Doc. 41.) This Court consolidated his appeals upon Taylor’s unopposed motion.

STATEMENT OF THE FACTS

Probation Officer Shelly Dargan supervised Taylor during his deferred sentences. (Transcript of Proceedings on Appeal, June 29,

2023 (“06/29/23 Tr.”) at 24–25.) She was “absolutely aware” that Taylor “struggle[s]” with bipolar disorder. (06/29/23 Tr. at 39.) She described him as “wonderful to work with” when “he is on his medications and not under illegal substances.” (06/29/23 Tr. at 39.) She testified that Taylor’s issues with his bipolar disorder could be misinterpreted as being under the influence of drugs. (06/29/23 Tr. at 41.)

On March 2, 2023—just five months before Taylor’s deferred sentences would have expired—Officer Dargan filed a Report of Violation in each case. (DC-17-445 Doc. 46, attached hereto as Appendix C.) Officer Dargan stated that, from August 2018 to October 2021, Taylor “appeared to be on the right track.” (App. C at 2; Transcript of Proceedings on Appeal, August 3, 2023 (“08/03/23 Tr.”) at 19.) But Taylor relapsed, and Officer Dargan utilized case management responses (increased urinalyses and reporting) on October 5, 2021. (App. C at 2.) “He appeared to get on track for about a month” but relapsed again, which culminated in “an incident” with his mother leading to PFMA charges on January 10, 2022. (App. C at 2.) After “a short jail sanction” and other interventions, “he seemed to get on track with supervision.” (App. C at 2.)

Taylor’s counselor called Officer Dargan on April 12, 2022 to report “they were struggling with him at treatment due to his mental health and reverting to use.” (App. C at 2.) The counselor continued to report difficulties, including continued substance use, “[o]ver the next month.” (App. C at 2; 08/03/23 Tr. at 21–22.)

On May 23, 2022, Officer Dargan held an Intervention Hearing. (App. C at 2.) Taylor “agreed to an up to 30-day jail sanction” and a 90-day stint at Connections Corrections Program. (App. C at 2–3; 06/29/23 Tr. at 37.)² He completed CCP on September 14, 2022, and “appeared on track” “[f]or the next few months[.]” (App. C at 3.) “[S]omewhere between November and December,” however, Taylor relapsed. (06/29/23 Tr. at 28.) In December 2022, Officer Dargan received a report Taylor was drinking, and police were called to his house because of altercations with his mother. (App. C at 3.) Officer Dargan later testified that Taylor resumed substance use and stopped attending treatment during

² Although Officer Dargan agreed with the State’s description that Taylor “had a 30 day sanction in Connections Corrections” in “May of 2022” at the dispositional hearing, that description is inconsistent with Officer Dargan’s prior testimony and her Report of Violation, both of which reported that Taylor agreed to an up-to-30-day *jail* sanction followed by 90 days at Connection Corrections. (*Compare* 08/03/23 Tr. at 22, *with* 06/29/23 Tr. at 37, *and* App. C at 2–3.)

this time. (08/03/23 Tr. at 23.)

Officer Dargan ordered Taylor to report to the office on January 31, 2023. (App. C at 3.) Taylor “couldn’t sit still” and “was rambling.” (06/29/23 Tr. at 25.) She believed Taylor “appeared highly intoxicated.” (App. C at 3.) Taylor reportedly cooperated in providing a preliminary breath test, resulting in a .04, and admitted to drinking. (App. C at 3; 06/29/23 Tr. at 25–26.) Taylor also reportedly admitted to using methamphetamine for about a week. (App. C at 3; 06/29/23 Tr. at 25.) Taylor had driven to the office, and Officer Dargan confiscated his keys and ordered him to report back when he was sober. (App. C at 3; 06/29/23 Tr. at 26–27.) She subsequently subjected him to increased urinalyses, “a few” of which were positive for illegal drugs, but “several” were negative. (06/29/23 Tr. at 42.)

Throughout February 2023, Taylor’s chemical dependency treatment providers or groups reported that Taylor was making threatening remarks in meetings. (App. C at 3.) Taylor acknowledged he was struggling with his mental health. (App. C at 3.) On February 26, 2023, someone called the police to report a man acting erratically at East Haven Baptist Church. (App. C at 3.) The caller said the man was

“driving strangely[,]” parking on the sidewalk, and walking over bench seats at the church. (06/29/23 Tr. at 8–9.) By the time Deputy Canyon Parcell arrived at the church, the man’s car was parked “on the lines” of two parking spots. (06/29/23 Tr. at 11.)

Deputy Parcell met with the caller, who identified Taylor as the subject of the call. (06/29/23 Tr. at 10–11.) Deputy Parcell had not met Taylor before. (06/29/23 Tr. at 16.) Deputy Parcell spoke to Taylor and believed he was under the influence of a stimulant because he “was extremely hyperactive, he spoke a thousand miles an hour, he rambled on sentences.” (App. C at 3; 06/29/23 Tr. at 11–12.) Deputy Parcell had Taylor perform a Modified Romberg test—*i.e.*, having Taylor announce when he thought thirty seconds had elapsed—and reported Taylor’s count as 19 seconds. (App. C at 3; 06/29/23 Tr. at 12.) In Deputy Parcell’s opinion, that indicated Taylor “was possibly on a stimulant.” (App. C at 3.) Taylor admitted to using stimulant drugs about a month prior but not on the day in question. (06/29/23 Tr. at 17–18, 20–21.) Taylor did not tell Deputy Parcell about any of his mental health struggles during their interaction. (06/29/23 Tr. at 22.)

Taylor’s probation officer authorized a search of his car, which

another deputy conducted, discovering “a couple Narcans” and a bottle of methadone that belonged to Taylor’s mother. (06/29/23 Tr. at 13.)

Taylor was taken to jail on a probation hold. (App. C at 3.)

The State petitioned to revoke Taylor’s deferred sentences in both cases. (DC-17-445 Doc. 47.) While the petitions to revoke were pending, the district court granted Taylor’s unopposed motion for release on recognizance effective June 19, 2023, so that Taylor could receive necessary dental extractions. (DC-17-445 Doc. 60; 06/29/23 Tr. at 46–47.)

The court held an adjudicatory hearing on June 29, 2023. (06/29/23 Tr.) Taylor’s counsel contended that the State had not proven any noncompliance violations, *i.e.*, that Taylor was driving under the influence on January 31 or February 26, because his preliminary breath test provided a result below the legal limit and because his unmedicated bipolar symptoms could be mistaken for symptoms of stimulant use. (06/29/23 Tr. at 51–55.) Accordingly, counsel argued the MIIG should be further utilized instead of revoking Taylor’s deferred sentences. (06/29/23 Tr. at 55.)

The district court found the State had proved all of the alleged

violations by a preponderance of the evidence, including the two alleged DUIs. (06/29/23 Tr. at 56–58.) The district court revoked Taylor’s deferred sentences but bifurcated the dispositional hearing to allow Taylor to complete his dental work and receive dentures. (06/29/23 Tr. at 58–59.)

Taylor remained in the community between the adjudicatory and dispositional hearings. On July 18, 2023, Officer Dargan reported he came to the probation office and “was nodding off[,]” so she confiscated his keys until he “sobered up.” (08/03/23 Tr. at 8.) Two days later, Taylor was taken to the emergency room and hospitalized for two days because of an overdose. (08/03/23 Tr. at 8.)

The court held the dispositional hearing on August 3, 2023—after his sentences would have expired if not for the revocation proceedings. (08/03/23 Tr.; App. C at 1.) Not long after Officer Dargan began testifying, the court interrupted: “I – the Court’s observing Mr. Damm, at this time the Court does have concerns that Mr. Damm is under the influence at this moment, and probably doesn’t have the capacity to go forward with this hearing.” (08/03/23 Tr. at 10.) Taylor responded, “The allegations you provided are inaccurate. I am not under the

influence at this time. I'm sorry you feel that way.” (08/03/23 Tr. at 10–11.) The court further noted “when you just addressed the Court you had slurred speech[,]” which Taylor clarified was due to his new dentures; he was still learning how to speak with them. (08/03/23 Tr. at 11.)

Taylor’s counsel immediately noted the parallels between the court’s allegations and the testimony provided at the adjudicatory hearing that Taylor’s mental health issues could appear similar to symptoms of drug use. (08/03/23 Tr. at 11–12.) The court issued an ultimatum: Taylor could provide a urinalysis, or he could go into custody for a few days to await a rescheduled hearing. (08/03/23 Tr. at 12.) Taylor’s counsel objected on due process grounds and noted that a urinalysis would not show whether Taylor was currently intoxicated, but only whether he had recently used. (08/03/23 Tr. at 13.) Taylor ultimately volunteered to provide the urinalysis, noting that only two prescription medications would be in his system. (08/03/23 Tr. at 16.) The results were negative. (08/03/23 Tr. at 18.) Because Taylor was not under the influence, the court resumed the hearing without further comment. (08/03/23 Tr. at 18.)

Officer Dargan recommended that Taylor be sent to the NEXUS treatment program, followed by a pre-release center. (08/03/23 Tr. at 7.) The State recommended that the court impose a five-year commitment to the Department of Corrections with no time suspended, to run concurrently in both cases, and with 114 days of time served credit “from February 26th to June 19th” 2023. (08/03/23 Tr. at 30–31, 36.) Officer Dargan’s report of violation recommended the court grant 30 months of credit for elapsed time served, but the State ultimately requested 37 months of credit “from August 2018 to October of 2021[.]” (App. C at 3; 08/03/23 Tr. at 36–37.)

Defense counsel recommended that Taylor’s sentences be suspended and that he be allowed to attend Recovery Centers of Montana, where he had secured an immediate bed date for residential treatment. (08/03/23 Tr. at 26, 32–33.) Counsel also reiterated that “today’s hearing showed” that “it is very possible to misinterpret Mr. Damm and his mental illness as being – him being high.” (08/03/23 Tr. at 34.) Counsel asked the court to consider “the low level of violations” and Taylor’s ongoing physical health issues as well. (08/03/23 Tr. at 34.)

The district court ultimately imposed the sentence recommended by the State, awarding Taylor credit for 114 days of credit for time served and 37 months of credit for elapsed time served. (08/03/23 Tr. at 36–37; App. A; App. B.) This appeal followed.

STANDARD OF REVIEW

“A district court’s calculation of credit for time served is reviewed for legality and [this Court] exercise[s] de novo review.” *State v. Crazy mule*, 2024 MT 58, ¶ 8, 415 Mont. 536, 545 P.3d 66; *State v. Gudmundsen*, 2022 MT 178, ¶¶ 8–15, 410 Mont. 67, 517 P.3d 146 (exercising de novo review over calculation of credit for elapsed time served).

A defendant need not object at sentencing to challenge the legality of a sentence on appeal. *State v. Lenihan*, 184 Mont. 338, 343, 602 P.2d 997, 1000 (1979). “Confinement beyond the expiration of a sentence is an unlawful imprisonment or restraint[.]” *Killam v. Salmonsens*, 2021 MT 196, ¶ 12, 405 Mont. 143, 492 P.3d 512; *see also State v. Kortan*, 2022 MT 204, ¶ 22, 410 Mont. 336, 518 P.3d 1283 (“The District Court . . . issued an illegal sentence when it failed to give . . . credit for time served.”). As such, a challenge to the denial of credit for time served

may be raised for the first time on appeal even absent an objection below, *State v. McCaslin*, 2011 MT 221, ¶ 8, 362 Mont. 47, 260 P.3d 403, or through a habeas corpus action, *Killam*, ¶ 12.

SUMMARY OF THE ARGUMENT

Taylor's sentences upon revocation are illegal to the extent the district court failed to grant Taylor all of the credit he earned for time served in detention centers and elapsed time served on probation without records of violations.

First, Taylor did not receive credit for substantial periods of time he served in detention centers—at least 45 days in DC-17-445, and at least 23 days in DC-18-39. Second, his sentences also failed to account for more than seven months of additional time served in the community on his deferred sentences with no records or recollections of violations. And finally, Taylor did not receive credit for 90 days he spent in inpatient substance abuse treatment pursuant to a probation sanction, which should have counted as either time served or elapsed time served.

This Court should reverse the district court's judgment and remand so that the district court can resolve any outstanding questions

regarding the precise credit owed and grant that statutorily required credit against Taylor's sentences.

ARGUMENT

I. Taylor's sentences upon revocation are illegal to the extent the district court failed to provide full credit for time served.

“Calculating credit for time served is not discretionary, but a legal mandate.” *Crazymule*, ¶ 8. When a district court revokes a suspended sentence, “[c]redit must be allowed for time served in a detention center or for home arrest time already served.” Mont. Code Ann. § 46-18-203(7)(b). The district court granted Taylor credit for 114 days of time served, reflecting his time in jail “from February 26th to June 19th” of 2023, while the petitions to revoke his deferred sentences were pending. (08/03/23 Tr. at 36–37.) But Taylor was entitled to at least 45 additional days of credit for time served in DC-17-445 and 23 additional days of credit for time served in DC-18-39, and his sentences are illegal to the extent the district court failed to grant that full credit. *Kortan*, ¶ 22. Accordingly, this Court should reverse the district court's judgment and remand for further proceedings to determine precisely the amount of time served credit to which Taylor is entitled.

A. The revocation order in DC-17-445 failed to grant credit for 22 days of time served in jail before his original sentencing in that case.

The district court granted Taylor 22 days of credit for time served in the original judgments filed in each of his cases. (DC-17-445 Doc. 45 at 6; DC-18-39 Doc. 19 at 6.) The record documented his arrest on August 11, 2017 (DC-17-445 Doc. 1 at 3) and his release on September 1, 2017 (DC-17-445 Doc. 43 at 1, 4). Both his arrest and release occurred before DC-18-39 was filed—indeed, before the alleged conduct underlying DC-18-39 occurred. (*See* DC-18-39 Doc. 3 (alleging conduct on or about October 8, 2017).) Accordingly, that credit for time served is owed against only DC-17-445’s sentence.

This credit was not incorporated into the district court’s revocation judgment in DC-17-445. (App. A at 2.) Rather, Taylor received 114 days of credit for time served in both cases, which accounted only for the time he spent in jail while the petitions to revoke were pending in 2023. (App. A at 2; App. B at 2; App. C at 2; DC-17-445 Doc. 60.) Taylor was statutorily entitled to an additional 22 days of credit for time served against his sentence upon revocation in DC-17-

445 to account for his pre-conviction incarceration in that case. Mont. Code Ann. § 46-18-203(7)(b); *Kortan*, ¶ 12.

B. Both revocation orders failed to grant credit for time served for jail sanctions ordered by his probation officer.

Taylor served at least 23 days in jail pursuant to probation sanctions for which he did not receive credit in his revocation orders. He was statutorily entitled to credit for that time served. Mont. Code Ann. § 46-18-203(7)(b); *State v. Tippets*, 2022 MT 81, ¶¶ 16–20, 408 Mont. 249, 509 P.3d 1 (granting credit for time served pursuant to probation sanction).

Officer Dargan imposed two jail sanctions during Taylor’s deferred sentences. (App. C at 2.) The first sanction, occurring on January 10, 2022, lasted at least one day and was described as a “short” sanction. (App. C at 2; 08/03/23 Tr. at 20.) Taylor is entitled to at least one day of credit for time served for this sanction. Mont. Code Ann. § 46-18-203(7)(b); *Tippets*, ¶ 17 (recognizing State concession that defendant was entitled to credit for time spent in jail as probation sanction).

The second sanction began on May 23, 2022, the day on which Officer Dargan held an Intervention Hearing with Taylor at the

Probation and Parole Office. (App. C at 2–3.) At that hearing, Taylor “agreed to an up to 30-day jail sanction, followed by the completion of Connection[s] Correction[s] Program (CCP).” (App. C at 2–3.) He was taken into custody immediately. (App. C at 2–3; 08/03/23 Tr. at 22.) He subsequently was taken from the detention center to CCP. (08/03/23 Tr. at 22.)

Taylor successfully completed CCP on September 14, 2022. (App. C at 3.) The duration of that program was 90 days. (06/29/23 Tr. at 37.) Accordingly, he must have been transferred from detention to CCP on June 16, 2022. In turn, he necessarily spent May 23, 2022 to June 16, 2022—22 days—in jail pursuant to his agreed-upon sanction. Taylor should have received those 22 days of credit for time served against his sentences upon revocation. Mont. Code Ann. § 46-18-203(7)(b); *Tippets*, ¶ 17.

Taylor’s sentences upon revocation are illegal to the extent they fail to grant credit for at least 23 days of time served pursuant to probation sanctions. *See Kortan*, ¶ 22. Because it is unclear whether Taylor served more than one day on his first jail sanction, this Court should reverse and remand with instructions to determine whether

Taylor is entitled to additional credit for time served for probation sanctions beyond the 23 days documented in the record.

II. Taylor’s sentences are illegal to the extent the district court failed to provide full credit for elapsed time served.

Section 46-18-203(7)(b) of the Montana Code Annotated provides that, upon revocation of a suspended or deferred sentence, a district court “shall consider any elapsed time, consult the records and recollection of the probation and parole officer, and allow all of the elapsed time served without any record or recollection of violations as a credit against the sentence.” A court may not deny credit for elapsed time served based “solely on a pattern of criminal behavior.”

Gudmundsen, ¶ 13 (quoting *State v. Jardee*, 2020 MT 81, ¶ 11, 399 Mont. 459, 461 P.3d 108). “Rather, specific violations established upon ‘the record or recollection of the probation officer’ are necessary ‘to establish a basis for denial of street time credit’ for the period claimed, and must be stated by the sentencing court.” *Gudmundsen*, ¶ 13 (quoting *Jardee*, ¶ 11); *see also Gudmundsen*, ¶ 14 (“The defendant is statutorily entitled to the credit unless specific violations during the times in question are *demonstrated*.” (emphasis added)). A reported violation does not stop the clock indefinitely; for example, even after

revocation proceedings are initiated, a defendant can resume earning elapsed time credit by resuming compliance with sentence conditions after posting bond. *See Jardee*, ¶¶ 4, 11.

The district court granted Taylor 37 months of credit for elapsed time served, in accordance with the State's recommendation. (App. A at 2; App. B at 2; 08/03/23 Tr. at 36–37.) However, the record demonstrates that Taylor was entitled to at least 45 months of elapsed time credit.

Taylor began serving his deferred sentences on August 2, 2018. (DC-17-445 Doc. 45.) Officer Dargan did not report any violations of his sentence conditions until October 5, 2021, when Taylor relapsed and was subjected to increased urinalyses and reporting. (App. C at 2.) The State did not contest that Taylor was entitled to credit for elapsed time served in that time period. (08/03/23 Tr. at 36–37.) But the State's math was wrong. Thirty-eight, not thirty-seven, months elapsed between August 2, 2018 and October 2, 2021, followed by three more days to reach October 5. Taylor was statutorily entitled to 38 months and three days, a total of 795 days, of credit for elapsed time served during that time period. Mont. Code Ann. § 46-18-203(7)(b).

In addition to Taylor’s initial 38 months of compliance, Officer Dargan’s records and testimony revealed other time periods in which Taylor resumed compliance with the conditions of his sentence. He should have received elapsed time credit for those time periods, as well. *See Jardee*, ¶¶ 4, 11 (“The State must now point to an actual violation by the defendant, in the relevant time period, found in the record or recollection of the probation officer, to establish a basis for denial of street time credit for that period, here, between the release on bond and sentencing.”).

First, Officer Dargan’s report of violation stated that Taylor was “on track for about a month” between October 2021 and January 2022, until he relapsed again. (App. C at 2.)

Second, after his jail sanction and other case management interventions on January 10 and January 12, 2022, Officer Dargan’s report stated Taylor “seemed to get on track” and did not document any other violations for three months, until April 12, 2022. (App. C at 2; *see also* 08/03/23 Tr. at 20–21 (describing violations in January 2022 and April 2022, but none between).)

Third, Officer Dargan reported that Taylor “appeared on track” between his completion of CCP on September 14, 2022 and December 2022—approximately two and a half months. (App. C at 3; 08/03/23 Tr. at 23.)

Fourth and finally, Officer Dargan testified at the dispositional hearing that Taylor violated the conditions of his sentence by relapsing approximately one month after he was released from detention to receive dental care. (DC-17-445 Doc. 60 (ordering release on June 19, 2023); 08/03/23 Tr. at 8 (testifying about intoxication on July 18 and overdose on July 20, 2023).)

These records and recollections demonstrate that Taylor is entitled to at least 45 months of credit for elapsed time served, and his revocation sentences are illegal to the extent they failed to grant that credit. Mont. Code Ann. § 46-18-203(7)(b). This Court should reverse the district court’s judgment and remand for further proceedings to determine Taylor’s elapsed time credit.

III. Whether applied as time served or elapsed time served, Taylor’s sentences are illegal to the extent the district court failed to grant credit for the 90 days he spent completing the Connections Corrections Program.

As noted above, Officer Dargan imposed—and Taylor agreed to—a probation sanction of treatment at CCP, which lasted 90 days. (App. C at 2–3; 06/29/23 Tr. at 37.) Taylor should have received credit against his revocation sentences for this time as either time served or elapsed time credit.

A. Taylor should have received 90 days of credit for time served for his time at CCP.

Section 46-18-203(7)(b), MCA, requires a district court to award credit for “time served in a detention center” when revoking a deferred or suspended sentence. This Court has looked to Section 7-32-2241(1) of the Montana Code Annotated to define the phrase “detention center”: “a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to the detention center.” *Tippets*, ¶ 19.

In *Tippets*, this Court “ha[d] little difficulty in concluding that the START facility” at issue in that case satisfied the statutory definition of “detention center” for two reasons. *Tippets*, ¶ 19. First, “the facility is

‘established and maintained by an appropriate entity’ which has lawfully contracted with the DOC to confine probationers referred to the facility by probation officers of the DOC.” *Tippets*, ¶ 19. And second, the purpose of the facility “is to confine probationers like Tippets to a secured facility as a result of sanctions imposed by the DOC.” *Tippets*, ¶ 19. The Court’s analysis was not affected by the fact that “the purpose for confinement . . . may be rehabilitation” because “rehabilitation is one consideration and purpose for any criminal sanction and resulting confinement.” *Tippets*, ¶ 19. The Court also emphasized that probationers at the facility were “not free to leave the facility until they have served their sanction period.” *Tippets*, ¶ 19. In short, Mr. Tippets was entitled to credit for time served for the time he spent at START. *Tippets*, ¶ 20.

Taylor likewise is entitled to credit for time served for the 90 days he spent at CCP. CCP is operated pursuant to contracts with the Montana Department of Corrections for “residential inpatient substance use disorder treatment[.]” *Residential Substance Use Disorder Treatment Centers*, Montana Department of Corrections,

<https://cor.mt.gov/Facilities/ResidentialSubstanceUseDisorderTreatmentCenters>

(last accessed Mar. 12, 2025).³ By definition, inpatient treatment requires confinement—a restraint on the patient’s liberty. See *United States v. Esparza*, 552 F.3d 1088, 1091 (9th Cir. 2009); *United States v. Nishida*, 53 F.4th 1144, 1151–52, 1155 (9th Cir. 2022); cf. Mont. Code Ann. § 45-7-306(1)(a)(iv) (defining “official detention” to include “placement in a community corrections facility or program” in statute criminalizing escape from official detention). Like in *Tippets*, Taylor was ordered to go to CCP for 90 days as a sanction for failing to comply with his probation conditions. (06/29/23 Tr. at 37.) Under these circumstances, CCP functioned as a “detention center” for Taylor for the duration of his probation sanction, and he should have received credit for the time he served there. Mont. Code Ann. § 46-18-203(7)(b); *Tippets*, ¶ 19.

³ Taylor requests judicial notice of the State’s description of CCP pursuant to Rule 201 of the Montana Rules of Evidence because it is “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned”—in this case, the State’s own website.

B. Alternatively, Taylor should have received 90 days of elapsed time credit for his time at CCP.

Even if this Court disagrees that Taylor's time at CCP was "time served in a detention center" within the meaning of § 46-18-203(7)(b), he should have received credit for that time against his revocation sentences as elapsed time served. Officer Dargan did not document or testify as to any violations of Taylor's sentence conditions during the time he spent in residential treatment at CCP, and he successfully completed treatment. (*See App. C at 2–3; 08/03/23 Tr. at 22–23.*) Accordingly, pursuant to Montana Code Annotated § 46-18-203(7)(b), he should have received credit for that time period as elapsed time served even if it did not qualify as time served in a detention center.

CONCLUSION

The district court erred when it granted Taylor only 114 days of credit for time served and 37 months of credit for elapsed time served in its revocation judgments. If this error is not corrected, Taylor will have to serve approximately one additional year in DOC custody after his sentences should have expired.

This Court should reverse the district court's judgment and remand for further proceedings to determine and grant the credit

Taylor has earned: not less than 159 days of credit for time served in DC-17-445, 137 days of credit for time served in DC-18-39, 45 months of credit for elapsed time served in both cases, and an additional 90 days of credit for either time served or elapsed time served for his CCP probation sanction in both cases.

Respectfully submitted this 13th day of March, 2025.

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By: /s/ Charlotte Lawson
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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 4,878, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Charlotte Lawson
Charlotte Lawson

APPENDIX

Revocation Order and Judgment App. A
Revocation Order and Judgment App. B
Report of Violation App. C

CERTIFICATE OF SERVICE

I, Charlotte Lawson, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 03-13-2025:

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