
STATE OF MONTANA,

Plaintiff and Appellee,

v.

MICHAEL MITCHELL,

Defendant and Appellant.

BRIEF OF APPELLANT

On Appeal from the Montana 5th Judicial District Court,
Jefferson County, the Honorable Luke Berger, Presiding

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STATEMENT OF THE ISSUES

Whether the district court erred in its calculation of Mitchell's credit for time served when it failed to credit Mitchell for the full amount of time he spent in custody on warrants related to his revocation.

STATEMENT OF THE CASE

On March 31, 2021, the district court sentenced Michael Mitchell to 20 years to the Department of Corrections, with 15 years suspended. (District Court Doc. 14.) On July 8, 2021, Mitchell was arrested and charged with a new felony sex offense in Lewis and Clark County. (Doc. 15.) The same day, his probation officer signed a report of violation. (Doc. 15.) Citing the report of violation, the State petitioned to revoke Mitchell's sentence on July 15, 2021. (Doc. 15.) Mitchell remained in custody in Lewis and Clark County and was transported for his initial appearance on the petition on September 1, 2021. (Docs. 25, 26.) One of Mitchell's family members posted a property bond on September 2, 2021. (Doc. 28.) The district court approved the property bond on September 8, 2021, and Mitchell was released. (Doc. 29.)

On June 29, 2022, the district court issued a warrant for Mitchell's arrest. (Doc. 40.) Mitchell's presentence investigation ("PSI")

report indicated that he was in custody in Lewis and Clark County at the time. (Doc. 56.) Mitchell was served with the warrant while in custody on July 6, 2022. (Doc. 42.) Mitchell was released on August 18, 2022, following another property bond undertaking. (Doc. 47.)

Following a hearing on the petition on January 4, 2023, the district court concluded that Mitchell had violated the terms of his sentence. (Doc. 54.) The district court ordered a new PSI, which reflected that Mitchell had 112 days of time served. (Doc. 56, Ex. A.)

At sentencing, Mitchell's counsel did not request any credit for time served. The State calculated that Mitchell had 34 days of time served. (7-12-23 at 12.) The district court revoked Mitchell's sentence and resentenced him to 15 years to the Department of Corrections, with no suspended time. (Doc. 68, Ex. B.) The district court gave Mitchell credit for 34 days of time served. (7-12-23 Tr. at 16.) Mitchell appealed.

STATEMENT OF THE FACTS

Mitchell knew that “the chances [he had] been given [he had] squandered.” (7-12-23 Tr. at 13.) But he felt that he had “worked hard” to try and turn things around. (7-12-23 Tr. at 13.) Despite his legal issues interrupting his education, Mitchell endeavored to finish high

school through the pendency of his cases. (7-12-23 Tr. at 13.)

Regardless of the district court's sentence on his revocation, he hoped to "work hard to get out and make [his] way through life as fast as is possible." (7-12-23 Tr. at 13.)

On March 31, 2021, the district court sentenced Mitchell to 20 years to the Department of Corrections, with 15 years suspended. (Doc. 14.) The district court sentenced Mitchell to serve his five-year active sentence in a community placement. (Doc. 14.) After Mitchell was arrested and charged with a new felony offense in Lewis and Clark County, the State petitioned to revoke Mitchell's sentence on July 15, 2021. (Doc. 15.) The attached report of violation was dated July 8, 2021, the date of Mitchell's arrest, and listed Mitchell's present address as the Lewis and Clark Detention Center. (Doc. 15.) Pertinently, the State's petition requested a warrant "for the Defendant's *continued* hold on this Petition." (Doc. 15, emphasis added.)

The district court issued a warrant on July 16, 2021. (Doc. 16.) Despite the State's knowledge of his custodial status, Mitchell was not served with the warrant until August 5, 2021. (Doc. 17.) Mitchell remained in custody in Lewis and Clark County through his initial

appearance on the petition on September 1, 2021. (Docs. 25, 26.) After a family member posted a property bond, Mitchell was released on September 8, 2021. (Doc. 29.)¹

On June 29, 2022, Mitchell was in custody in Lewis and Clark County when the district court issued an arrest warrant. (Docs. 40, 56.) Mitchell was served with the warrant while in custody on July 6, 2022. (Doc. 42.) Mitchell was released on August 18, 2022, following another property bond undertaking. (Doc. 47.)

After several continuances, the district court conducted a hearing on the petition on January 4, 2023. (Doc. 53.) One week later, the district court issued its order concluding that Mitchell had violated the conditions of his sentence. (Doc. 54.)

At sentencing, Mitchell's grandmother testified that Mitchell had lived with her since he was a young child and that she relied on him greatly. (7-12-23 Tr. at 7.) She further testified regarding the burden that a custodial sentence would impose upon her. (7-12-23 Tr. at 9.) The district court denied Mitchell's request for 19 months of street time, attributing that time to the five-year active portion of Mitchell's

¹ The record is unclear, however this 34-day period following service of the warrant and Mitchell's release appears to be the sole range the State argued Mitchell was entitled to credit for.

previous sentence. (7-12-23 Tr. at 12.) Counsel did not request any credit for time served. The State calculated, and the district court agreed, that Mitchell had only 34 days of time served. (7-12-23 at 12.)

STANDARD OF REVIEW

The law affords a sentencing court no discretion to grant credit for time served. *State v. Spagnolo*, 2022 MT 228, ¶ 5, 410 Mont. 457, 520 P.3d 330. Accordingly, the Court reviews a district court's calculations crediting time served for legality under a de novo standard. *State v. Tippets*, 2022 MT 81, ¶ 10, 408 Mont. 249, 509 P.3d 1.

SUMMARY OF THE ARGUMENT

Mitchell is entitled to 112 days of credit for time served in custody during the pendency of his revocation. The record demonstrates that Mitchell twice was held on warrants in his revocation and that he was not credited the commensurate time spent in custody. Therefore, the district court failed to credit Mitchell for the full amount of time he was entitled to in his revocation proceeding.

ARGUMENT

The district court erred when it failed to credit Mitchell the entire amount of time he spent in custody on warrants during his revocation proceeding.

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. Accordingly, when imposing a sentence that includes incarceration in a detention facility or the state prison, the sentencing court “shall provide credit for time served by the offender before trial or sentencing.” Section 46-18-201(9), MCA. This Court has held that § 46-18-201(9), MCA, is “unqualified.” *Spagnolo*, ¶ 7 (citing *Killam v. Salmonsens*, 2021 MT 196, ¶ 17, 405 Mont. 143, 492 P.3d 512). *Killam* interpreted the “clear and unambiguous” language of § 46-18-201(9), MCA, to clarify that time spent incarcerated pre-trial and pre-sentencing must be calculated toward an offender’s sentence as credit for time served. *Killam*, ¶¶ 16, 19.

Section 46-18-203, MCA, governs revocation proceedings. Pertinently, § 46-18-203(7)(b), MCA, provides that, if a suspended or deferred sentence is revoked, “[c]redit *must* be allowed for time served in a detention center or for home arrest time already served.”

(Emphasis added.) This language is consonant with the mandate of § 46-18-201(9), MCA. *See State v. Kortan*, 2022 MT 204, ¶ 21, 410 Mont. 336, 518 P.3d 1283 (noting that the language of § 46-18-203(7)(b), MCA, “is not discretionary when it comes to the awarding of credit for time served on a revoked suspended or deferred sentence[.]”).

Revocation proceedings may be initiated by the filing of a report of violation by a probation officer. Section 46-23-1012(5), MCA.

In *State v. Crazy mule*, Crazy mule was arrested on new tribal charges during the suspended portion of her sentence. 2024 MT 58, ¶¶ 3–4, 415 Mont. 536, 545 P.3d 66. While Crazy mule was in custody on the tribal charges, the State filed to revoke her suspended sentence. *Crazy mule*, ¶ 5. The district court issued an arrest warrant the same day. *Crazy mule*, ¶ 5. Despite knowing Crazy mule’s custodial status and location, the State failed to serve her with the warrant until nearly six months later. *Crazy mule*, ¶¶ 5, 7. At sentencing, Crazy mule requested credit for time served from the date the revocation petition and warrant were filed. *Crazy mule*, ¶ 7. The district court denied Crazy mule’s request, reasoning that it did not have jurisdiction over Crazy mule until she was served with the arrest warrant. *Crazy mule*, ¶

7. The district court credited Crazy mule only for the time served beginning when she was served with the revocation warrant.

Crazy mule, ¶ 7.

On appeal, the Court reversed and concluded that Crazy mule was due credit from the date the revocation warrant was issued. *Crazy mule*, ¶ 15. The Court looked at the plain language of §46-18-203(7)(b), MCA, to conclude that Crazy mule was entitled to time served in a detention center. *Crazy mule*, ¶ 9. The Court then clarified that the district court retained jurisdiction over Crazy mule during her suspended sentence. *Crazy mule*, ¶ 12. Despite the belated service of the warrant, the Court ruled that the warrant and accompanying petition “nonetheless acted as a detainer” because Crazy mule was not free to leave tribal detention. *Crazy mule*, ¶ 12. The Court noted that “Crazy mule could do nothing to move forward on the revocation petition despite the proceeding having commenced[,]” effectively lengthening her sentence by nearly six months. *Crazy mule*, ¶ 13.

Crazy mule proves closely analogous. Like Crazy mule, Mitchell was arrested on new charges and in custody when the State filed a petition to revoke. Like Crazy mule, the State knew Mitchell’s location

and failed to serve him with the warrant for a period of time. Similar to *Crazymule*, Mitchell could do nothing to move forward on his revocation until he was transported on the warrant for his initial appearance—nearly two months after the filing of the petition.

However, *Crazymule* proves distinct in one way. In *Crazymule*, the Court determined that the issuance of the warrant triggered the district court’s jurisdiction. Here, the district court did not issue a warrant until July 16, 2021. However, Mitchell’s probation officer filed a report of violation on July 8, 2021. The revocation proceeding was thus initiated, and Mitchell’s liberty was restrained, on July 8, 2021. See §46-23-1012(5), MCA. Indeed, the State requested Mitchell’s “continued hold” on the petition, inferring the existence of a hold on Mitchell related to the revocation proceeding. Accordingly, Mitchell is entitled to credit for time served starting on July 8, 2021, the date of the report of violation, until his release on September 8, 2021, totaling 62 days. The district court issued a subsequent warrant on June 29, 2022, and Mitchell was released again on August 18, 2022. Thus, Mitchell additionally is entitled to credit for the period between June

29, 2022, and August 18, 2022, totaling 50 days. In sum, Mitchell served 112 days.

CONCLUSION

The district court failed to abide by the legal mandate entitling Mitchell to credit for the time spent in detention centers. The Court must reverse and remand to the district court with instructions to grant Mitchell credit for 112 days of time served.

Respectfully submitted this 9th day of April, 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 1,879, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Justin T. Redeen
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APPENDIX

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Sentencing Order.....App. B

CERTIFICATE OF SERVICE

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