

IN THE SUPREME COURT OF THE STATE OF MONTANA

Cause No. DA 24-0367

STATE OF MONTANA,

Plaintiff and Appellee,

v.

SANCHA MARIE VALENZUELA

Defendant and Appellant.

BRIEF OF APPELLANT

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

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STATEMENT OF THE ISSUES

Whether the District Court unlawfully sentenced Valenzuela for the revocation of her deferred sentence by misinterpreting and misapplying MCA §46-18-203(7)(b) in its determination of elapsed time credit. Whether the District Court erred in calculating the credit for elapsed time when sentencing Valenzuela for the revocation of her deferred sentence.

STATEMENT OF THE CASE

On March 16, 2022, the State charged Valenzuela by Information with Count I: Criminal Possession of Dangerous Drugs with Intent to Distribute, a felony in violation of §45-9-103, MCA; Count II: Criminal Possession of Dangerous Drugs, a felony in violation of §45-9-102, MCA; and Count III: Criminal Possession of Drug Paraphernalia, a misdemeanor, in violation of §45-10-103, MCA. (Doc. 3.) Valenzuela pleaded guilty to an amended Count I: Criminal Possession of Dangerous Drugs, a felony, and to Count II: Criminal Possession of Dangerous Drugs, a felony, according to a Plea Agreement. (Doc. 53.)

On November 30, 2022, the District Court sentenced Valenzuela

to a three-year deferred imposition of sentence on both counts, running concurrently. (App. A at 1-7; Doc. 56.)

On February 8, 2024, the State filed a four-count Petition for Revocation of Deferred Sentence (Doc. 58). Valenzuela ultimately pleaded true to three compliance violations and one non-compliance violation for absconding. (App. A at 13; Doc. 71.)

On April 17, 2024, a Dispositional Hearing was held. (Disp. Tr. at 1-49.) Officer Ibsen carefully read from Valenzuela's probation chronological entries that Officer Hilyard had prepared. (Disp Tr. at 6-31.) The record and recollections of the probation officers consist of Ibsen's testimony and the information in the ROV prepared by Hilyard. (App. A at 10; Doc. 57 at 2; Disp. Tr. at 6-31.) These records provide sufficient evidence of violations that occurred on all days of probation, except the days allocated to non-employment, which are not specified in the record.¹ (App. A at 10; Doc. 57 at 2; Disp. Tr. at 6-31.)

The District Court revoked Valenzuela's previous sentence and

¹ Appendix 'B' summarizes both probation officers' records and recollections, consisting of Ibsen's Testimony of violations at the Dispositional Hearing, and the notations in Hilyard's ROV.

resentenced her to three years in the Department of Corrections, with no time suspended. (App. A at 16; Doc. 76.) The court granted 172 days of jail time served and 148 days of elapsed time credit, also referred to as “street time credit,” from an eligible 283 days, as reflected in the record. (App. A at 16; Doc. 76.) Valenzuela challenges the legality of the District Court’s sentence because it did not correctly interpret and apply MCA §46-18-203(7)(b) when determining and calculating credit for elapsed time, resulting in an illegal sentence and mistake.

STATEMENT OF THE FACTS

On March 8, 2022, the Great Falls Police Department attempted to contact Valenzuela under an active arrest warrant. (Doc. 1.) She was with Bo Valenzuela, who was on felony probation and also had an active warrant. (Doc. 1.) The on-call Adult Probation and Parole (AP&P) Officer arrived at their hotel room and conducted a probation search, which resulted in the discovery of 13.4 grams of meth, 32 fentanyl pills, and drug paraphernalia. (Doc. 1.)

On November 30, 2022, Ms. Valenzuela was convicted of two counts of Criminal Possession of Dangerous Drugs, Felony, according to

the plea agreement. (App. A at 1-7; Doc. 38; Doc. 56.) She was sentenced to a three-year deferred imposition of sentence, and Counts I and II were run concurrently. (App. A at 2; Doc. 56.) The written sentencing order included condition four: “The Defendant must seek and maintain employment or maintain a program approved by the Board of Pardons and Parole or the supervising officer.”(App. A at 3; Doc. 56 at 3.)

AP&P Officer (Officer) Hilyard began supervising Valenzuela on December 1, 2022. (App. A at 9; Doc. 57 at 1.) After fourteen months of supervision, he prepared a Report of Violation (ROV) dated February 8, 2024. (App. A at 10; Doc. 57 at 2.) The same day, the State filed a Petition for Revocation of Deferred Sentence based on the ROV. (Doc. 58.) The ROV and Petition alleged four counts. (App. A at 9; Doc. 57 at 1; Doc. 58.) Count I: A compliance violation for not residing at the address provided to AP&P, no date range (App. A at 10; Doc. 57 at 2.) Count II: A compliance violation for failing to follow the treatment provider’s recommendations, dated February 1, 2024. (App. A at 9; Doc. 57 at 1.) Count III: A compliance violation for failing to secure

employment, no date range. (App. A at 9; Doc. 57 at 1.) Count IV: A non-compliance violation for absconding, dated September 1, 2023. (App. A at 10; Doc. 57 at 2.)

Valenzuela pleaded true to all four counts at an Evidentiary Hearing held on April 3, 2024. (App. A at 13-14; Doc. 71; 4/3/2024 Evidentiary Hearing Transcript (Evid. Tr.) at 8-13.) The court scheduled the Dispositional Hearing two weeks later, instructing defense counsel to verify with AP&P the recommended street time credit stated in the ROV, which appeared to be incorrect. (Evid. Tr. at 6-8.) Valenzuela's counsel informed the court that he had confirmed with Officer Hilyard his recommendation of 428 days for street time credit. (Evid. Tr. at 7; Disp. Tr. at 35.)

Valenzuela filed a sentencing memo the day before disposition, wherein she recommended a total credit of 268 days for elapsed time. (Doc. 72; Disp. Tr. at 3.)

At disposition on April 17, 2024, Officer Hilyard was replaced by Probation Officer Ibsen, who appeared without objection from Valenzuela. (Disp. at 4-5.)

Ibsen testified that at the hearing did not omit any information, and that Officer Hilyard kept extensive notes. (Disp. Tr. at 30, 31.)

Ibsen's testimony involved reading aloud entries prepared by Hilyard from Valenzuela's probation record. ² (Disp. Tr. at 7-18.)

At the close of cross-examination, Valenzuela objected to Ibsen's testimony, arguing that it violated her right to due process and a fair proceeding because the information presented was not part of the State's discovery. (Disp. Tr. at 32-33.) In response to the objection, the State informed the court that details about the ROV's contents were obtained directly from interviewing the Probation Officer, as the State does not receive the offender's chronological record in its discovery. (Disp. Tr. at 33.) The State also informed the court that defense counsel had the same access to the Probation Officer as the State did and could have questioned him about the specific violations mentioned in the ROV before the hearing. (Disp. Tr. at 33.)

The court denied Valenzuela's objection, agreeing with the State that it was not a violation of due process, as defense counsel was on

² See *supra* 2 n.1.

notice of the violations in the ROV and had the opportunity to speak with the Probation Officer, who could have provided more detailed information to the defense prior to the hearing. (Disp. Tr. at 33-34.)

The District Court determined elapsed time credit by accepting the State's recommended 148 days as more appropriate without referring to specific dates in the record without violation. The court stated:

I find that, at least as to street time, there is that amount of time that Ms. Kummer addressed, where we kind of have a not very clear picture of what happened or whether there are any clear violations. And I think that based on that, you're entitled to that time, but I think that Ms. Kummer's conclusion as to street time is more appropriate here, as opposed to the amount of time that was found in your brief, Mr. Kuntz. (App. A at 22; Disp. Tr. at 46.)

So, I don't know what happened there, but we had testimony here today, and based on that, I'm going to – she's entitled to 148 days of street time. That's the number I'm going with here. Frankly, I think that probably it should be even less, but I'm going to go with what the State gave me. (App. A at 22; Disp. Tr. at 46.)

Despite Ibsen's lengthy recitation of approximately sixty specific chronological entries, it appears that the parties did not take note of the

many days without violation.³ (Disp. Tr. 6-31.) A review of the records and recollections of the probation officers indicates that, in addition to the 148 days of street time credit granted by the Court, Valenzuela had 135 days without violations, for a total of 283 days, which the District Court did not consider in its determination of street time credit. (App. A at 10; Doc. 57 at 2; Disp. Tr. 6-31.)

The District Court unlawfully denied credit for street time by failing to reference the record and the probation officers' recollections to determine whether there was credible evidence sufficient to deny credit for the elapsed time, and it did so without providing the necessary explanation. (Disp. Tr. 46-47.)

STANDARD OF REVIEW

“[R]evocation decisions involve both legal and factual findings, and this Court reviews a district court’s legal findings de novo and its factual findings for clear error; thus, findings of fact regarding a probationer’s credit for elapsed time or time served are reviewed for clear error.” *State v. Jardee*, 2020 MT 81, ¶¶ 5, 12, 399 Mont. 459, 461

³ See *supra* 2 n.1.

P.3d 108. A district court’s calculation of credit affects the lawfulness of a sentence; therefore, this Court reviews such a claim even if not preserved. *State v. Souther*, 2022 MT 203, ¶ 12, 410 Mont. 330, 519 P.3d 1 (citing *State v. Lenihan*, 184 Mont. at 343, 602 P.2d 997, 1000 (1979)).

“Calculating credit for elapsed street time and 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 (citing *State v. Tippets*, 2022 MT 81, ¶ 10, 408 Mont. 249, 509 P.3d 1).

SUMMARY OF THE ARGUMENT

The District Court misinterpreted and misapplied Mont. Code Ann. §46-18-203(7)(b) in its determination of credit for elapsed time at sentencing. (App. A at 22-23; Disp. Tr. at 46-47.) When the District Court disregarded the probation officer’s “records and recollections” in assessing credit for elapsed time, it unlawfully sentenced Valenzuela for the revocation of her deferred sentence. (App. A at 22-23; Disp. Tr. at 46-47.) The district court’s approach led to errors, miscalculations, and omissions of allowable credit for elapsed time, resulting in mistaken conclusions. (App. A at 22-23; Disp. Tr. at 46-47.)

Valenzuela requests that the Dispositional Order issued by the District Court be remanded with instructions to correct the amount of credit for elapsed time owed to Valenzuela in accordance with this Court's opinion.

ARGUMENT

I. The District Court unlawfully sentenced Valenzuela for the revocation of her deferred sentence by misinterpreting and misapplying MCA §46-18-203(7)(b) in its determination of elapsed time credit.

Valenzuela should have received credit for all days of elapsed time where the probation officer's record or recollection did not document a violation. MCA Section 46-18-203(7)(b),(2023), states:

If a suspended or deferred sentence is revoked, the judge 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. If the judge determines that elapsed time should not be credited, the judge shall state the reasons for the determination in the order. Credit must be allowed for time served in a detention center or for home arrest time already served.

“When a [district] court calculates credit for elapsed street time served, this Court has held that it is not a discretionary act, but a legal mandate.” *State v. Pennington*, 2022 MT 180, ¶ 18, 410 Mont. 104, 517

P.3d 894. (citing *State v. Tippets*, 2022 MT 81, ¶ 10, 408 Mont. 249, 509 P.3d 1.) The State bears the burden of proving that a violation has occurred and that credit for elapsed time should not be granted. Mont. Code Ann. §46-18-203(6).

“It is insufficient for a [district] court to base a denial of elapsed time credit solely on a 'pattern' of criminal behavior. Such generalized assessments of a probationer's conduct do not render the elapsed-time credit discretionary. 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.” *State v. Gudmundsen*, 2022 MT 178, ¶ 13, 410 Mont. 67, 71, 517 P.3d 146, 149 (citing *State v. Jardee*, 2020 MT 81, ¶5, 399 Mont. 459, 461 P.3d 108).

A district court's potential consideration of elapsed time in forming the revocation sentence does not eliminate entitlement to credit. The Defendant is statutorily entitled to credit unless specific violations during the relevant times are demonstrated. *Gudmundsen* ¶ 14.

In *Pennington*, a case involving the revocation of a deferred sentence, this Court determined that a district court's denial of elapsed time credit did not satisfy the requirements of § 46-18-203(7)(b), MCA, because the sentencing judge, “did not provide any explanation for its denial of credit nor point to any specific record or recollection of a violation” during the period for which the defendant argued he deserved credit. Thus, this Court concluded that the defendant had been illegally sentenced. *State v. Pennington*, 2022 MT 180, ¶ 29, 410 Mont. 104, 517 P.3d 894.

Here, the “record and recollection” of the probation officers consists of an ROV prepared by Officer Hilyard, which included his narrative of Valenzuela’s supervision record, and Officer Ibsen’s testimony at the Dispositional Hearing. (App A, at 10; Doc. 57 at 2; Disp. Tr. at 6-31.)

Ibsen testified by reading chronological entries directly from Valenzuela’s probation record to the court; some of which were noted in the ROV, while most of the chemical dependency entries were not. ⁴

⁴ See *supra* 2 n.1.

(App A, at 10; Doc. 57 at 2; Disp. Tr. at 7-31.) Ibsen's testimony was lengthy yet thorough. (Disp. Tr. at 7-31.) He confirmed that he had not withheld any entries from Valenzuela's record during his testimony and that Officer Hilyard maintained detailed chronological notes. (Disp. Tr. at 30, 31.) Ibsen clarified for the court Hilyard's contradictory written statements in the ROV recommending 428 days of street time. (Disp. Tr. at 6.) However, Ibsen was not asked to address Hilyard's conflicting statements regarding the periods relevant to Valenzuela's non-employment. (App. A at 9-10; Doc. 57 at 1-2; Disp. Tr. at 6-31.)

The District Court is silent regarding credit for elapsed time in its written Dispositional Order, but did state its reason for *revoking* Valenzuela's sentence, by stating, "The Defendant has repeatedly failed to comply with the conditions of her probation." (App. A at 16; Doc. 76.) At the Dispositional Hearing, the District Court provided further details on its reasons for *revoking* Valenzuela's sentence by summarizing the violations testified to by Ibsen. (App. A at 20-21; Disp. Tr. at 44-45.)

The District Court discussed its decision to allow 148 days of street

time credit by saying,

Well, so anyway, let's – and “ I'm not discounting what you're saying here, but we have testimony here today; you had a chance to -- and again, I -- we have to kind of keep these matters moving. It's almost 4:30. I have a lot more cases to handle. Our time is limited, but” we got a lot of testimony on violations here today, so I'm going to ask the State what the State's recommendation is on time, and then, Mr. Kuntz, [defense counsel], I'll ask you again. You can base your recommendation on what you heard here, too. (Disp. Tr. at 35-36.)

I find that, at least as to street time, there is that amount of time that Ms. Kummer [Prosecuting Attorney] addressed, where we kind of have a not very clear picture of what happened or whether there are any clear violations. And I think that based on that, you're entitled to that time, but I think that Ms. Kummer's conclusion as to street time is more appropriate here, as opposed to the amount of time that was found in your brief, Mr. Kuntz. (App. A at 22; Disp. Tr. at 46.)

So, I don't know what happened there, but we had testimony here today, and based on that, I'm going to -- she's entitled to 148 days of street time. That's the number I'm going with here. Frankly, I think that probably it should be even less, but I'm going to go with what the State gave me. (App. A at 23; Disp. Tr. at 47.)

Similar to the facts in *Gudmunson*, the District Court did not provide a connection to the record and denied credit for the elapsed time based on an overall impression of Ibsen's testimony as evidence of Valenzuela's pattern of violations, which was insufficient as a basis for

denying street time credit. *State v. Gudmundsen*, 2022 MT 178, ¶10, 410 Mont. 67, 517 P.3d 146. The District Court relied on the State’s review and presentation of the record and not its discretion when it determined Valenzuela’s elapsed time credit. (App. A at 22; Disp. Tr. at 46.)

Similar to the facts in Pennington, the District Court denied Valenzuela lawfully permissible credit for the elapsed time without explanation, failing to point to any violations in the days claimed, which resulted in an unlawful sentence. *Pennington*, ¶ 29 (App. A at 22; Disp. Tr. at 46-47.)

II. District Court erred in calculating the credit for elapsed time when sentencing Valenzuela for the revocation of her deferred sentence.

Valenzuela argues that the District Court hastily disallowed credit for eligible elapsed time, resulting in a miscalculation by disregarding the records and recollections of the probation officers as required by Mont. Code Ann. §46-18-203 (7)(b). (App A, at 21-22; Disp. Tr. at 45-46)

A district court’s potential consideration of elapsed time in

forming the revocation sentence does not eliminate entitlement to credit. A defendant is statutorily entitled to credit unless specific violations during the times in question are demonstrated. This Court found §46-18-203(7)(b) allows credit for elapsed time for periods after or between violations. *Gudmundsen*, ¶¶ 4-6, 14.

This Court has affirmed a district court's denial of credit for elapsed time when the probation record contains *substantial* evidence of specific and ongoing violations during the claimed period. *State v. Charles*, 2025 MT 58, 565 P.3d 1191, 421 Mont. 210 (citing *State v. Johnson*, 2022 MT 216, ¶ 29, 410 Mont. 391, 519 P.3d 804).

“A district court's factual findings “are clearly erroneous if they are not supported by substantial, credible evidence, the court misapprehended the effect of the evidence, or if a review of the record leaves this Court with the definite, firm conviction that a mistake has been made.” *Jardee*, ¶ 5 (quoting *State v. Johnson*, 2018 MT 277, ¶ 10, 393 Mont. 320, 430 P.3d 494). The State bears the burden of proving that a violation has occurred and that credit for elapsed time should not be granted. Mont. Code Ann. §46-18-203(6).

Here, the District Court received calculations of credit for elapsed time from four sources before adopting the State's proposed recommendation of 148 days. (App A, at 10; Doc. 57 at 2; Doc. 72 at 3; Disp. Tr. at 3, 7, 36-37.)

In the ROV, Officer Hilyard calculated 428 days of street time credit. (Doc. 57 at 3.) However, at the Evidentiary Hearing on April 3, 2024, the court pointed to specific narrative statements in the ROV regarding violations, interventions, and other measures taken to exhaust the MIIG.⁵ (Evid Tr. at 6.) It appeared Hilyard had not deducted any days from his 428-day recommendation. (Evid Tr. at 6.) The court pointed out the anomaly in the ROV to the attention of defense counsel as something that needed to be definitively determined before disposition. (Evid. Tr. at 6-8; Disp. Tr. at 34.) At the Dispositional Hearing, Officer Ibsen explained that Hilyard's recommended 428 days of street time credit represented an overview of the total days Valenzuela was under AP&P supervision, rather than the

⁵ Montana Incentives and Interventions Grid (MIIG) is a tool Officers use to advance compliance in offenders.

street time recommendation as written in the ROV. (App. A at 10; Doc. 57 at 2; Disp. Tr. at 3.) Ibsen recommended five days of credit for elapsed time without referencing the record for support. (Disp. Tr. at 7.)

Valenzuela recommended a total of 268 days of credit for elapsed time over the following periods: December 1, 2022 to January 14, 2023 (45 days); January 18, 2023 to July 27, 2023 (191 days); and August 1, 2023 to September 1, 2023 (32 days). (Doc. 72 at 3; Disp. Tr. at 38, 39.)

At the Dispositional Hearing, counsel acknowledged that he failed to count eligible days of elapsed time credit from September 1, 2023, to February 7, 2024 (159 days), which he admitted was an error on his part. (Disp. Tr. at 7.)

The State recommended 148 days at disposition for the period from February 9, 2023, to July 6, 2023. (Disp. Tr. at 36-37.) The State noted one violation in May for non-employment and indicated that it would “leave it to the court’s discretion as to whether to exclude that one day.” (Disp. Tr. at 36.)

The Absence of the District Court’s Determination of Non-Employment.

The statute governing the determination of credit for elapsed

time, Mont. Code Ann. § 46-18-203(7)(b) requires the court to ascertain whether the defendant committed a specific probation violation that precludes elapsed time credit. It also necessitates supporting evidence from records and the recollection of the probation and parole officer. District court judges have the discretion to determine whether there is a record or recollection of a probation violation that would negate elapsed time credit for a specific period. *Jardee*, ¶ 19 (McKinnon, J., concurring).

Here, the District Court did not exercise its discretion to determine whether condition number four in Valenzuela's sentencing order, which required employment, was violated. (App. A at 22-23; Disp. Tr. at 46-47.) The District Court did not determine if the evidence was sufficient to warrant denial of all elapsed time credit for periods after May 12, 2023. (App. A at 22-23; Disp. Tr. at 46-47.)

At the 4/3/2024 Evidentiary Hearing, Valenzuela pleaded true to Count III: a compliance violation for failing to secure employment. However, no period was alleged or applied to the admission. (Evid. Tr. at 12.) Hilyard's description of this violation appears on page three of

the ROV, where he notes that Valenzuela had “not worked since May 12, 2023.” (App. A at 10; Doc. 57 at 2.)

An essential consideration of a district court in determining the sufficiency of the evidence to deny street time credit includes the application of exceptions or exemptions that negate an alleged violation. *State v. Puccinelli*, 2024 MT 114, 416 Mont. 444, 549 P.3d 441. In *Puccinelli*, this Court held that “evidence at the probation revocation hearing did not support finding that the probationer did not make a good faith effort to pay restitution throughout her probationary period, and thus the failure should have been excused.” *State v. Puccinelli*, 2024 MT 114, 416 Mont. 444, 549 P.3d 441.

Here, in Valenzuela’s original Sentencing Order, the language of condition four reads: “The Defendant must seek and maintain employment or maintain a program approved by the Board of Pardons and Parole or the supervising officer.” (App. A at 3; Doc. 56 at 3.) The language provides an alternative to the employment condition when an offender participates in a residential treatment program, as was the case with Valenzuela. (App. A at 3; Doc. 56 at 3.)

Valenzuela entered residential treatment on October 16, 2023. (App. A at 10; Doc. 57 at 2.) Valenzuela’s subsequent violation occurred on January 2, 2024, 79 days later. Valenzuela’s participation in residential treatment is an alternative to the employment condition in the sentencing order because it is “a program approved by the supervising officer.” (App. A at 3; Doc. 56 at 3.)

Although Hilyard noted that Valenzuela was in a treatment program, and it is assumed he approved of it, he did not excuse the employment requirement in the ROV for this period, when he stated she had not” worked since May 12, 2023. “ (App. A at 10; Doc. 57 at 2.) Unlike the assistance we received from Ibsen while navigating Hilyard’s 428-day street time recommendation, here, Ibsen failed to acknowledge that a non-employment violation had occurred during his testimony.

Clarification of Hilyard’s contradictory narrative regarding non-employment, exceptions, or specific applicable dates in the ROV is incomplete and lacks credibility, as it does not specify the dates the alleged violation covers when there is evidence it does not cover the entire span after May 12, 2023. (App. A at 10; Doc. 57 at 2; Disp. Tr. at

6-31.)

Valenzuela argues that when Hilyard failed to specify the days relevant to this violation or any other possible exceptions, the District Court should have reviewed the record to determine whether Hilyard's "report" of a non-employment violation was supported by credible evidence sufficient to justify denying specific days of street time credit.

Instead, the District Court arbitrarily granted elapsed time credit for the one day specified by the State as a non-employment violation on May 12, 2023. It granted credit for the subsequent 55 days, from May 13, 2023, to July 6, 2023, without mentioning any violations. However, it did not grant credit for the periods from July 8, 2023, to July 19, 2023 (12 days); July 21, 2023, to July 24, 2023 (4 days); and October 16, 2023, to January 2, 2024 (79 days), without providing a determination explaining its reasons for denying credit during those times. (App. A at 22-23; Disp. Tr. at 46-47.)

Periods of Eligible Elapsed Time Credit

Valenzuela has identified seven periods of eligible elapsed time credit, totaling 283 days, based on the transcripts of Ibsen's testimony

and Hilyard's written ROV. ⁶ (App. A at 10; Doc. 57 at 2; Disp. Tr. 7-31.)

One: December 1, 2022, to December 4, 2022 (4 days).

This period was recommended by Valenzuela and proposed by the State as allowable credit for elapsed time. The record indicates that no violations occurred during this period; however, the District Court did not provide a reason for denying credit. (App. A at 23; Doc. 72 at 3; Disp. Tr. at 7-8, 36-37, 47.)

Two: December 6, 2022, to January 11, 2023 (37 days).

Valenzuela proposed this period. No violations occurred during this time; however, the District Court did not grant credit and did not provide reasons. (App. A at 22-23; Doc. 72 at 3; Disp. Tr. at 7-8, 46-47.)

Three: February 9, 2023, to May 11, 2023 (92 days).

This period was included in Valenzuela's calculation for elapsed time credit and in the State's recommendation for a total elapsed time credit of 148 days, and the district court permitted it. (App. A at 22-23; Doc. 72 at 3; Disp. Tr. at 9-10, 36-37, 46-47.)

Four: May 12, 2023, to July 6, 2023 (55 days).

⁶ See *supra* 2 n.1.

This period was calculated as elapsed time credit by Valenzuela and recommended by the state; the District Court subsequently granted credit for the elapsed time. (App. A at 22-23; Doc. 72 at 3; Disp. Tr. at 9-10, 36-37, 46-47.)

Five: July 8, 2023, to July 19, 2023 (12 days).

This period was calculated as elapsed time credit by Valenzuela; however, the District Court did not grant credit for elapsed time without providing an explanation. (Doc. 72 at 3.) When the District Court failed to state the reasons for its exclusion, it did not comply with the statute. Valenzuela argues that the days should be recognized as credit for elapsed time, given the absence of findings indicating a violation during this period. (App. A at 22-23; Doc. 72 at 3; Disp. Tr. at 9-10, 46-47.)

Six: July 21, 2023, to July 24, 2023 (4 days).

This period was calculated as elapsed time credit by Valenzuela. (Doc. 72 at 3.) The court did not grant credit for elapsed time without providing an explanation. (App. A at 22-23; Disp. Tr. at 46-47.) When the District Court failed to explain its reasons for exclusion, it did not

comply with the statute. Valenzuela argues that the four days should be recognized as credit for elapsed time, given the absence of findings regarding a violation for this period. (Doc. 72 at 3; App. A at 22-23; Disp. Tr. at 10, 46-47.)

Seven: October 16, 2023, to January 2, 2024 (79 days).

Valenzuela's defense counsel did not mention this period in the Sentencing Memo; however, he acknowledged the error on his part at the Dispositional Hearing. (Doc. 72 at 3; Disp. Tr. at 41.) Nevertheless, a review of the record strongly supports a firm belief that a mistake occurred due to denying elapsed time credit for Valenzuela's participation in residential treatment during this period. (Doc. 72 at 3; App. A at 10; Doc. 57 at 2; Disp. Tr. at 16, 40-41.) According to the record, Valenzuela began residential treatment on October 16, 2023. (App. A at 10; Doc. 57 at 2.) She did not have a violation until January 2, 2024. (App. A at 10; Doc. 57 at 2; Disp. Tr. at 16, 40.) Residential treatment is an alternative mentioned in the language of the employment condition in her original sentencing order. Any absence of employment during this period should be excused and not used to deny

street time credit, as the language in the sentencing order provides an appropriate alternative. (App. A at 3; Doc. 56 at 3.)

CONCLUSION

At the Dispositional Hearing, Officer Ibsen carefully read from Valenzuela's probation chronological entries that Officer Hilyard had prepared.⁷ (Disp Tr. at 6-31.) Ibsen's testimony, combined with the information in the ROV prepared by Hilyard, provides sufficient evidence of violations that occurred during probation, except the date ranges covering non-employment, which are not specified on the record.⁸ (App. A at 10; Doc. 57 at 2; Disp. Tr. at 6-31.)

The District Court erred by not determining whether the evidence presented was sufficiently credible to deny credit for elapsed time and by failing to identify any exceptions or excuses for non-employment or other alleged violations. (App A, at 22-23; Disp. Tr. at 46-47.) The District Court erred by miscalculating the periods for which credit should have been granted for elapsed time when no documented

⁷ See *supra* 2 n.1.

⁸ See *supra* 2 n.1.

violations existed, and by failing to explain the denial of credit for elapsed time during those days without violation. (App A, at 22-23; Disp. Tr. at 46-47.)

Valenzuela requests that the Court remand the case to the District Court with instructions to correct its determination of elapsed time credit and grant additional elapsed time credit for periods without violation, and, under § 46-18-203(7)(b), MCA, provide the required explanation for any elapsed time credit that the District Court has denied.

Respectfully submitted this 29th day of May 2025.

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CERTIFICATE OF COMPLIANCE

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CERTIFICATE OF SERVICE

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