

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 25-0211

STATE OF MONTANA,

Plaintiff and Appellee,

vs.

KARREN KAY SCHMIEDEKE,

Defendant and Appellant.

APPELLANT'S OPENING BRIEF

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

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TABLE OF CONTENTS

TABLE OF CONTENTS-i-

TABLE OF AUTHORITIES-ii-

STATEMENT OF THE ISSUES1

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS 3

STANDARDS OF REVIEW 8

SUMMARY OF ARGUMENT8

ARGUMENT10

I. Schmiedeke is entitled to 12 additional days of jail credit10

II. Schmiedeke is entitled to 3 additional months of street time.12

CONCLUSION13

CERTIFICATE OF COMPLIANCE 14

CERTIFICATE OF SERVICE15

Appendices:

Order of Revocation and Disposition (Doc. 76)Appendix A

Order of Revocation Judgment and Sentence (Doc. 39)Appendix B

TABLE OF AUTHORITIES

Cases:

State v. Gudmundsen, 2022 MT 178, 410 Mont. 67, 517 P.3d 146 12

State v. Jardee, 2020 MT 81, 339 Mont. 459, 461 P.3d 10812, 13

State v. Lenihan, 184 Mont. 338, 602 P.2d 997 (1979) 8

State v. Powell, 2025 MT 218, 424 Mont. 180, 577 P.3d 1508, 12

State v. Souther, 2022 MT 203, 410 Mont. 330, 519 P.3d 18, 10, 12

State v. Tracy, 2005 MT 128, 327 Mont. 220, 113 P.3d 297 10, 11

State v. Youpee, 2018 MT 102, 391 Mont. 246, 416 P.3d 105010

Montana Code Annotated:

§ 45-6-316 (2015)3

§ 45-6-316(3) (2015)3

§ 46-18-116(3)3, 9, 13

§ 46-18-203(7)(b)9, 12, 13

§ 46-18-403(1)9, 10, 11

STATEMENT OF THE ISSUES

1. Whether the district court erred by failing to award twelve days of jail credit from the 2019 revocation.
2. Whether the district court erred by failing to award three months of street time from the 2019 revocation.

STATEMENT OF THE CASE

Appellant Karren Kay Schmiedeke (“Schmiedeke”) appeals the Order of Revocation and Disposition entered January 22, 2025, by the Eleventh Judicial District Court, Flathead County. (Doc. 76; App. A.)

On June 11, 2015, Schmiedeke was convicted of Criminal Endangerment in DC-14-274. (Doc. 26 at 1.) The district court imposed a five-year suspended commitment to the Department of Public Health and Human Services (“DPHHS”). (*Id.*)

On October 26, 2017, she was convicted of Issuing a Bad Check in DC-17-058 – this appeal arises from that case – and received a concurrent five-year suspended commitment to the Department of Corrections (“DOC”). (Doc. 25 at 1–2.)

On February 19, 2019, the State petitioned to revoke both suspended sentences in a consolidated proceeding. (Doc. 27.) On October

17, 2019, the district court revoked both sentences and imposed concurrent five-year suspended DOC commitments. (10/17/2019 Tr. 15:10–18; App. B at 1–2.) The court combined the probation conditions from both cases into a single unified set. (10/17/2019 Tr. 15:19–22; App. B at 2, lns. 10–12.) At that point, the sentences in DC-14-274 and DC-17-058 were merged. The district court awarded Schmiedeke five months of street time credit from DC-14-274 and thirteen days of jail credit from the merged cases (twelve days from DC-14-274 and one day from DC-17-058). (10/17/2019 Tr. 15:23–25; App. B at 2, lns. 13–19.)

When the district court later sentenced Schmiedeke in the present revocation, it failed to apply the previously awarded twelve days of jail credit from DC-14-274. (01/21/2025 Tr. 117:19–25; App. A at 2.)

Schmiedeke timely appealed. (Doc. 80; S.C. Doc. 1.) She seeks credit for those twelve days.

Regarding street time, the 2019 Report of Violation recommended five months of credit in DC-14-274 and an additional three months in DC-17-058 for separate periods during which Schmiedeke was compliant. (Doc. 26 at 2.) The district court did not award the three months due to an error by counsel. (10/17/2019 Tr. 16:1–2; App. B at 2,

lns. 14–15.) Although the error occurred years ago, it is a factually incorrect, record-based sentencing error that may be corrected at any time under § 46-18-116(3), MCA. Schmiedeke therefore seeks credit for the additional three months of street time she earned in DC-17-058.

STATEMENT OF THE FACTS

Original Sentence

On January 25, 2017, the Flathead County Attorney’s Office charged Schmiedeke with Issuing a Bad Check by Common Scheme, in violation of § 45-6-316, MCA (2015). (Doc. 3.) The Information alleged that between November 1 and December 21, 2016, she wrote five checks totaling \$2,203.20 that were returned for insufficient funds. (*Id.*) The offense carried a maximum penalty of ten years imprisonment and a \$50,000 fine. (*Id.*; § 45-6-316(3), MCA (2015).)

Schmiedeke pled no contest on September 1, 2017. (Docs. 20, 21.) On October 26, 2017, the district court sentenced her to a fully suspended five-year DOC commitment, concurrent with her existing five-year DPHHS commitment in DC-14-274. (10/26/2017 Tr. 10:19–11:1; Doc. 25 at 2.) She received one day of jail credit. (10/26/2017 Tr. 11:1–3; Doc. 25 at 5, lns. 5–6.)

First Revocation (2019)

On February 19, 2019, the State filed a joint petition to revoke both suspended sentences. (Doc. 27.) The probation officer recommended a total of eight months of street time credit: five months in DC-14-274 (June 11 – November 15, 2015) and three months in DC-17-058 (October 26, 2017 – January 27, 2018). (Doc. 26 at 1–2.)

On October 17, 2019, the district court revoked both sentences, imposed concurrent five-year suspended DOC commitments, and merged the sentences and probation conditions. (10/17/2019 Tr. 15:10–22; App. B at 2, lns. 4–12.)

The district court awarded:

- 14 days of jail credit during the revocation;
- 5 months of street time credit (from DC-14-274 only);
- 13 days of jail credit from the original sentences (12 days from DC-14-274, 1 day from DC-17-058).

(10/17/2019 Tr. 7:20–23, 15:23–25; App. B at 2, lns. 13–19.)

The court did not award the additional three months of street time documented for DC-17-058 (at Doc. 26, 1–2.), because the attorneys mistakenly stipulated to only five months. (10/17/2019 Tr. 7:13–16.)

Thus, after the first revocation:

- Jail credit actually awarded: 27 days
- Street time actually awarded: 5 months
- Street time that should have been awarded: 8 months

Second Revocation (2022–2023)

The State filed another petition to revoke both sentences on August 24, 2022. (Doc. 40.) The probation officer recommended ten months of street time, and the parties agreed Schmiedeke accrued an additional seven months while the petition was pending. (08/03/2023 Tr. 7:19–8:2; Doc. 41 at 2.)

The district court revoked the sentences on March 16, 2023. (Doc. 60 at 1.) At disposition on August 3, 2023, the court reimposed concurrent five-year suspended DOC commitments. (08/03/2023 Tr. 11:12–18; Doc. 60 at 1.)

The court awarded:

- 3 days of jail credit;
- 17 months of street time credit.

(08/03/2023 Tr. 12:13–16; Doc. 60 at 2, lns. 4–5.)

The court did not carry forward any jail credit from the original sentences, or any street time awarded in the first revocation. If the district court had properly applied prior credit, the total credit after the second revocation should have been:

- Jail: $27 + 3 = 30$ days
- Street time: $8 + 17 = 25$ months

Third Revocation (2024–2025)

On September 30, 2024, the State petitioned to revoke only DC-17-058. (Doc. 63.) Schmiedeke admitted some violations, and officers testified to others, at an adjudication and disposition hearing on January 21, 2025. (01/21/2025 Tr. 5:12–50:7.) Her probation officer testified about current street time credit but did not address prior credit. (*Id.* at 50:8–76:12.)

The district court revoked the suspended sentence. (*Id.* at 78:12–79:15.) The State recommended a five-year DOC commitment with one day of jail credit and nine months of street time. (*Id.* at 105:16–106:5.) Defense counsel argued for a suspended sentence with one day of jail credit and twelve months of street time. (*Id.* at 108:22–110:24.)

The court committed Schmiedeke to the DOC for five years, recommending placement at Passages and Prerelease. (01/21/2025 Tr. 117:12–15; App. A at 2.) The court awarded:

- 1 day of jail credit;
- 12 months of street time.

(01/21/2025 Tr. 117:15–18; App. A at 2, lns. 4–5.)

The court then awarded prior credit as follows:

- 1 day of jail credit from the original sentence in DC-17-058;
- 14 days of jail + 5 months of street time from the 2019 revocation;
- 3 days of jail + 17 months of street time from 2023 revocation.

(01/21/2025 Tr. 106:11–14, 117:19–23; App. A at 2, lns. 6–11.)

The total credit awarded was:

- Jail: $1 + 1 + 14 + 3 = 19$ days
- Street time: $12 + 5 + 17 = 34$ months

Credit Schmiedeke Should Have Received

Had all prior credit been properly carried forward, Schmiedeke should have received:

- First merged revocation: 27 days jail + 8 months street time

- Second revocation: 3 days jail + 17 months street time
- Third revocation: 1 day jail + 12 months street

Correct totals:

- Jail: $27 + 3 + 1 = 31$
- Street time: $8 + 17 + 12 = 37$ months

STANDARDS OF REVIEW

Calculating credit for time served upon revocation “is not a discretionary act, but a legal mandate.” *State v. Powell*, 2025 MT 218, ¶ 9, 424 Mont. 180, 577 P.3d 150 (citations omitted). Whether a defendant is legally entitled to additional credit is reviewed de novo. *Id.* Factual findings underlying a credit calculation are reviewed for clear error. *Id.*

Because credit calculations directly affect the lawfulness of a sentence, this Court will review an alleged error even if not preserved below. *State v. Souther*, 2022 MT 203, ¶ 12, 410 Mont. 330, 519 P.3d 1 (citing *State v. Lenihan*, 184 Mont. 338, 342, 602 P.2d 997, 1000 (1979)).

SUMMARY OF ARGUMENT

Schmiedeke is entitled to additional jail and street time credit because the district court failed to apply credits that were previously earned and required by statute.

Jail Credit: The district court imposed concurrent five-year DOC sentences in 2019. Once concurrent sentences are imposed, jail credit earned in either case must be applied to both because § 46-18-403(1), MCA, requires credit for every day a defendant spends in jail related to the offense. The district court correctly awarded a total of thirteen days of jail credit in 2019, but later failed to carry forward twelve of those days.

Street Time: Schmiedeke is entitled to three additional months of street time credit. Under § 46-18-203(7)(b), MCA, a court must award credit for every period of compliance unless the State identifies a specific violation that occurred during that exact time. The probation officer documented two separate periods totaling eight months of compliance in 2019, but due to a mistake by the attorneys, the district court awarded only five months. Because nothing in the record shows any violation during the omitted three-month period, this Court should correct the factually erroneous sentence under § 46-18-116(3), MCA.

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ARGUMENT

I. SCHMIEDEKE IS ENTITLED TO 12 ADDITIONAL DAYS OF JAIL CREDIT.

A defendant incarcerated on aailable offense “must be allowed credit for each day of incarceration prior to or after conviction.” § 46-18-403(1), MCA. This Court has held that jail credit must be applied to all concurrent sentences because “concurrent means operating at the same time.” *Souther*, ¶ 13 (quoting *State v. Tracy*, 2005 MT 128, ¶ 28, 327 Mont. 220, 113 P.3d 297). When sentences run concurrently, a defendant receives credit against each sentence and the sentences “merge.” *Souther*, ¶ 13 (citing *State v. Youpee*, 2018 MT 102, ¶ 8, 391 Mont. 246, 416 P.3d 1050). In contrast, when sentences are consecutive, credit is applied only once to the aggregate because the sentences have not merged. *Id.*

A. The sentences merged in 2019.

On October 17, 2019, the district court imposed concurrent five-year DOC commitments in DC-14-274 and DC-17-058 and consolidated the probation conditions into a single set. (10/17/2019 Tr. 15:10–22; App. B at 2, lns. 4–12.) By exercising its discretion to run the sentences

concurrently, the court necessarily determined that all jail credit must apply to each sentence. *Tracy*, ¶ 28.

Accordingly, the district court properly awarded Schmiedeke a total of thirteen days of jail credit for the merged sentences – twelve days in DC-14-274 and one day in DC-17-058. (App. B at 2, lns. 16–19.)

B. Once the sentences merged, jail credit from both cases must follow Schmiedeke through every subsequent revocation.

Despite awarding the twelve days from DC-14-274 in 2019, the district court failed to carry forward those credits in later revocations. In the 2023 revocation, the court did not award any of the previously granted jail credit (or street time). (08/03/2023 Tr. 11:18–20; Doc. 60 at 2.)

At the disposition hearing on January 21, 2025, the court awarded the single day of jail credit from DC-17-058 (July 31, 2017) but failed to include the twelve days from DC-14-274, which Schmiedeke served between July 31 and August 11, 2014. (Compare App. B at 2, lns. 16–19 with App. A at 2, ln. 7.)

A district court cannot rescind or disregard jail time credit once earned. § 46-18-403(1), MCA. Once concurrent sentences merge, all

previously earned credit must continue to be applied in subsequent revocations. *Souther*, ¶¶ 13–14. The omission of the twelve days of credit from DC-14-274 therefore constitutes an illegal sentencing error.

II. SCHMIEDEKE IS ENTITLED TO 3 ADDITIONAL MONTHS OF STREET TIME CREDIT.

Street time credit is governed by § 46-18-203(7)(b), MCA, which requires a district court to award credit for all “elapsed time served without any record or recollection of violations.” This Court has held that street time credit is mandatory for every period of compliance – whether occurring before, between, or even after alleged violations. *Powell*, ¶ 14.

To deny such credit, the State must identify a specific violation during the precise period at issue, supported by the supervising officer’s record or recollection. *State v. Jardee*, 2020 MT 81, ¶ 10, 339 Mont. 459, 461 P.3d 108. A general “pattern” of noncompliance is insufficient. *Jardee*, ¶ 11; *State v. Gudmundsen*, 2022 MT 178, ¶ 13, 410 Mont. 67, 517 P.3d 146.

In the 2019 revocation, the probation officer expressly identified two distinct periods of earned street time credit:

- 5 months in DC-14-274 (June 11, 2015 – Nov. 5, 2015); and

- 3 months in DC-17-058 (Oct. 26, 2017 – Jan. 27, 2018).

(Doc. 26 at 1–2.)

Both periods reflected full compliance. However, at the disposition hearing the attorneys mistakenly stipulated to only the five months in DC-14-274. (10/17/2019 Tr. 7:13–16.) The district court therefore awarded only those five months and omitted the three months from DC-17-058. (10/17/2019 Tr. 7:20–23, 15:23–25; App. B at 2, lns. 13–19.)

Section 46-18-203(7)(b) does not permit withholding earned credit where there is no finding of a violation. A district court cannot deny street time credit without making specific findings identifying a violation during that period. *Jardee*, ¶¶ 10, 13. No such findings were made in 2019.

Montana law permits correction of a factually erroneous sentence “at any time.” § 46-18-116(3), MCA. Schmiedeke therefore requests that this Court correct the record to award the additional three months of street 5time credit.

CONCLUSION

Schmiedeke respectfully requests that this Court remand with instructions for the district court to award twelve additional days of jail

credit (July 31 – August 11, 2014), and three months of street time credit (Oct. 26, 2017 – Jan. 27, 2018).

Respectfully submitted this 11th day of December, 2025.



Britt Cotter
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CERTIFICATE OF COMPLIANCE

Pursuant to the Montana Rules of Appellate Procedure, I hereby certify that the Appellant's Opening Brief is printed with proportionately spaced Times New Roman typeface of 14 points; is double-spaced except for lengthy quotations or footnotes; and does not exceed 10,000 words. The exact word count, as calculated by my Microsoft Word software and excluding tables and certificates is 2,302.

Respectfully submitted this 11th day of December, 2025.



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CERTIFICATE OF SERVICE

I, Britt Cotter, hereby certify that I have served true and accurate copies of the foregoing Appellant's Opening Brief to the following on December 11, 2025:

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