

DA 24-0581

IN THE SUPREME COURT OF THE STATE OF MONTANA

2026 MT 195N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ROBERT JACKSON JORE,

Defendant and Appellant.

APPEAL FROM: District Court of the Twentieth Judicial District,
In and For the County of Lake, Cause No. DC-22-71
Honorable John A. Mercer, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Tammy A. Hinderman, Appellate Defender Division Administrator,
Jennifer Penaherrera, Assistant Appellate Defender, Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Mardell Ployhar,
Assistant Attorney General, Helena, Montana

James Lapotka, Lake County Attorney, Benjamin R. Anciaux, Deputy
County Attorney, Polson, Montana

Submitted on Briefs: July 22, 2026
Decided: August 18, 2026

Filed:


Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Robert Jackson Jore (Jore) appeals the District Court's Judgment on First Revocation entered August 8, 2024, which revoked his suspended sentence for Driving Under the Influence of Alcohol or Drugs, Fourth or Subsequent Offense, and sentenced him to three years in the Montana State Prison (MSP) with credit for one day of jail time. Jore contends the District Court erred by failing to award him 276 days of elapsed (street) time credit under § 46-18-203(7)(b), MCA. For the reasons set forth below, and consistent with this Court's recent decisions in *State v. Pajnich*, 2025 MT 101, 422 Mont. 12, 568 P.3d 562 and *Williams v. Green*, 2025 MT 102, 422 Mont. 17, 568 P.3d 549, we affirm.

¶3 Jore was sentenced on August 25, 2022, to a Department of Corrections (DOC) commitment of 13 months followed by five years to MSP, all suspended. He completed the WATCH program and began community supervision on February 22 or 23, 2023. On January 9, 2024, Probation & Parole Officer Christopher Brasch filed a Report of Violation (ROV) alleging multiple violations, including alcohol consumption and failure to complete a chemical dependency evaluation. The State filed a Petition to Revoke on January 9, 2024.

¶4 An adjudicatory hearing was held May 2, 2024, at which Jore admitted the violations alleged in the ROV and the court accepted his admissions and set disposition for August 8, 2024. However, prior to the disposition, the probation officer filed an Addendum alleging additional alcohol consumption violations in late May 2024, and the State also filed a Verified Petition to Revoke Bond and Issue Warrant on August 8, 2024, alleging further July 2024 violations.

¶5 At the disposition hearing on August 8, 2024, the court asked the parties whether any credit for time served, street time, or jail time was due. Defense counsel stated, “As far as I know he has one day credit on the original judgment, Your Honor.” The prosecutor noted the probation officer’s recommendation that Jore “violated so quickly after being placed on probation that he should not receive any credit for street time.” The State and defense counsel then agreed that one day of credit was appropriate. The District Court sentenced Jore to three years MSP, recommended WATCH screening, and awarded one day of elapsed time credit.

¶6 Jore’s appeal raises the single issue of whether the District Court erred in denying him 276 days of elapsed time credit.

¶7 Jore argues the District Court failed to award him 276 days of elapsed time credit for periods during which he was on community supervision and for which there was no record or recollection of violations. He calculates 532 days between his release to supervision and the revocation sentencing hearing and contends the record supports violations only for 256 of those days, leaving 276 days for which he should have received credit.

¶8 When 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.” Section 46-18-203(7)(b), MCA. If the court determines elapsed time should not be credited, the court “shall state the reasons for the determination in the order.” Section 46-18-203(7)(b), MCA. This Court has repeatedly held that elapsed time credit must be awarded unless the State points to a specific violation in the record or the recollection of the probation officer during the period for which credit is sought. *See State v. Jardee*, 2020 MT 81, ¶¶ 10-13, 399 Mont. 459, 461 P.3d 108; *State v. Pennington*, 2022 MT 180, ¶ 29, 410 Mont. 104, 517 P.3d 894; *State v. Gudmundsen*, 2022 MT 178, ¶¶ 13-15, 410 Mont. 67, 517 P.3d 146.

¶9 This Court’s recent decisions clarify the circumstances in which a defendant may challenge elapsed time credit on appeal. In *Pajnich*, the Court held that when a defendant accepts a plea agreement that specifies a particular calculation of elapsed time, the defendant may not later challenge that calculation on appeal in the absence of a contemporaneous objection or a mistake of fact. *Pajnich*, ¶¶ 11-13. The Court explained that a plea agreement providing a specific number of days creates a distinct situation in which the district court may rely on the parties’ agreement rather than stating reasons for denying additional elapsed time. *Pajnich*, ¶ 12.

¶10 In *Williams*, this Court addressed a habeas petition challenging denial of elapsed time credit and emphasized that the dispositive issues were whether the district court considered the period for which credit was claimed and whether the defendant objected or

had an opportunity to object at sentencing. *Williams*, ¶¶ 11-12. The Court concluded that where a sentence falls within statutory parameters and a defendant fails to object at sentencing or on appeal, the claim is waived and not cognizable in habeas. *Williams*, ¶¶ 11-13.

¶11 Here, the record shows the District Court asked the parties at disposition whether any credit for time served, street time, or jail time was due. Defense counsel stated, “As far as I know he has one day credit on the original judgment, Your Honor.” The prosecutor noted the probation officer’s recommendation that Jore “violated so quickly after being placed on probation that he should not receive any credit for street time.” The State and defense counsel then agreed that one day of credit was appropriate, and the court adopted that figure.

¶12 Jore did not object to the parties’ agreement at the disposition hearing, nor did he request that the court calculate elapsed time credit differently or require the State to identify specific violations during the periods for which he now seeks credit. The record therefore presents the same circumstances addressed in *Pajnich*—the court was presented with a specific elapsed time calculation (here, effectively the parties’ agreement that only one day of credit was due) and defense counsel affirmatively stipulated to that figure at the hearing. Under *Pajnich*, when the parties present a specific agreed calculation of elapsed time to the district court, the court may rely on that agreement and need not state reasons for denying additional elapsed time that was never requested. *Pajnich*, ¶¶ 11-13.

¶13 Jore attempts to distinguish his case by emphasizing that he did not enter a plea agreement and that many of the alleged violations occurred after the adjudicatory hearing.

But *Pajnich*'s reasoning is not limited to plea agreements; it applies whenever the court is presented with a specific elapsed time calculation that the parties accept and to which the defendant fails to object. See *Pajnich*, ¶ 12 (explaining the “distinct situation” created when the parties agree to a specific calculation). *Williams* likewise instructs that where the court considered elapsed time and the defendant had notice and opportunity to object at sentencing but did not do so, the claim is waived. *Williams*, ¶¶ 10-12.

¶14 Here, the District Court plainly considered elapsed time: it asked the parties whether any credit for time served, street time, or jail time was due. The prosecutor informed the court of the probation officer's recommendation that Jore receive no street time credit. Jore therefore had notice and opportunity to object or request a different calculation, but neither he nor his counsel did so. Under *Pajnich* and *Williams*, Jore's failure to object and his counsel's stipulation to the one-day figure waived his right to challenge the elapsed time calculation on appeal.

¶15 Jore argues the probation officer's recommendation did not account for the 276 days he now claims were violation-free and that the record contains no specific violations during those days. Those factual assertions are central to the merits of an elapsed time claim. But the procedural posture here is dispositive—Jore did not preserve that argument in the District Court at disposition. He had the opportunity to request that the court parse the supervision period and identify specific violation-free intervals, as well as the opportunity to either call the probation officer to testify about the record and recollection of violations, or object to the State's position. He did none of these. Under *Pajnich*, a defendant who fails to make a contemporaneous objection or demonstrate a mistake of fact at the

revocation hearing waives the right to raise the elapsed time calculation on appeal. *Pajnich*, ¶¶ 11-13. *Williams* reinforces that where the sentence falls within statutory parameters and the defendant had notice and opportunity to object but did not, the claim is waived. *Williams*, ¶¶ 11-13.

¶16 Finally, Jore’s sentence—three years to MSP with one day of credit—falls within the statutory range for the offense and the revocation disposition. The District Court therefore imposed a sentence within statutory parameters. Any failure to award additional elapsed time or state its reasons for denying it is an objectionable error that Jore had the opportunity to raise at disposition but did not preserve. *See State v. Kotwicki*, 2007 MT 17, ¶ 13, 335 Mont. 344, 151 P.3d 892; *Williams*, ¶¶ 11-13; *Pajnich*, ¶ 13.

¶17 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶18 Affirmed.

/S/ INGRID GUSTAFSON

We Concur:

/S/ KATHERINE M. BIDEGARAY

/S/ LAURIE McKINNON

/S/ JAMES JEREMIAH SHEA

/S/ JIM RICE