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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0327**

State of Minnesota,
Respondent,

vs.

Robera Abdella Ganamo,
Appellant.

**Filed June 26, 2017
Affirmed
Connolly, Judge**

Ramsey County District Court
File No. 62-CR-12-5853

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney,
Joshua L. Weichsel (certified student attorney), St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Laueremann, Assistant
Public Defender, Samantha Alsadi (certified student attorney), St. Paul, Minnesota (for
appellant)

Considered and decided by Peterson, Presiding Judge; Connolly, Judge; and Smith,

Tracy M., Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

In this appeal from the district court's denial of appellant's request for sentence clarification, appellant contends that the district court erred in not allowing custody credit for time spent in a juvenile placement at Glen Mills Schools. Because appellant did not meet his burden of establishing that he was entitled to credit, and because the district court did not clearly err in its factual findings or misapply the law, we affirm.

FACTS

Appellant Robera Abdella Ganamo pleaded guilty to first-degree aggravated robbery in 2008 after being charged by respondent State of Minnesota by juvenile petition. Appellant was "designated as an Extended Jurisdiction Juvenile" (EJJ), and received a stayed 48-month prison sentence requiring his compliance with probation conditions. The district court ordered placement at Glen Mills Schools in Pennsylvania for nine to twelve months. Appellant successfully completed his time at Glen Mills and returned to Minnesota in 2010.

Appellant then violated his EJJ and subsequent adult probation three times after his return to Minnesota. After the first violation, the district court revoked appellant's EJJ status and sentenced him to prison for 48 months stayed for 20 years. Appellant served local jail time as a sanction for the second probation violation. And after the third violation, appellant requested execution of his prison sentence. The district court granted his request, giving him credit for 228 days in custody. Appellant thereafter filed a request for sentence

clarification, in part seeking credit for 471 days spent at Glen Mills. The district court denied the request. This appeal follows.

D E C I S I O N

“A criminal defendant is entitled to jail credit for time spent in custody ‘in connection with the offense or behavioral incident being sentenced.’” *State v. Clarkin*, 817 N.W.2d 678, 687 (Minn. 2012) (citing Minn. R. Crim. P. 27.03, subd. 4(B)). A defendant is entitled to custody credit for time spent in a treatment facility if the placement’s “level of confinement and limitations imposed are the functional equivalent of a placement in a jail, workhouse, or regional correctional facility.” *Asfaha v. State*, 665 N.W.2d 523, 523-24 (Minn. 2003). “Awards of jail credit are governed by principles of fairness and equity and must be determined on a case-by-case basis. A defendant has the burden of establishing that he is entitled to jail credit for a specific period of time.” *State v. Arend*, 648 N.W.2d 746, 748 (Minn. App. 2002) (quotation omitted). “The decision whether to award credit is a mixed question of fact and law.” *Clarkin*, 817 N.W.2d at 687 (quotation omitted). We review the district court’s factual findings for clear error, and review de novo the district court’s application of the rules of law. *Id.* The district court does not have discretion to award jail credit. *Id.*

The district court’s order denying appellant’s request for custody credit for the time spent at Glen Mills was supported by a memorandum, which reads in relevant part:

In *State v. Fields*, the Minnesota Supreme Court held that a district court’s denial of jail credit for time spent at Glen Mills was not clearly erroneous. *State v. Fields*, 679 N.W.2d 341[, 349] (Minn. 2004). Specifically, the Supreme Court indicated that it agreed with the district court which had noted

that it was “familiar with” the Glen Mills program, which “is an excellent program, but it is a structured residential treatment program and is not incarceration.” [*Id.* (quotation omitted)]. Such is the case here. [Appellant’s] time at Glen Mills Schools provided him with educational and behavioral programs and resulted in his acquiring his high school diploma. Accordingly, the request for additional custody credit is denied as the Glen Mills School[s] program was not incarceration for purposes of jail credit.

Appellant argues that the district court’s reliance on *Fields* alone is insufficient to satisfy the close-look requirement of *Asfaha*, which suggests that “district courts must look closely at the facts of the case presented” to determine whether a particular placement is the functional equivalent of a jail placement. *Asfaha*, 665 N.W.2d at 528. He contends that Minnesota correctional facilities also provide treatment and education, so these considerations should not weigh in favor of a determination that Glen Mills is not a functional equivalent of jail placement.

Though the district court’s factual findings were minimal, they can be analogized to those in *Fields*. The district court in *Fields* relied only on its familiarity with Glen Mills, and the supreme court found that sufficient to affirm. *State v. Fields*, 679 N.W.2d 341, 349 (Minn. 2004). In the instant matter, the district court considered *Fields* and wrote, “Such is the case here.” While this is not an in-depth analysis of the sort likely contemplated by *Asfaha*, it does indicate a consideration of appellant’s circumstances. Appellant bore the burden to show entitlement to custody credit and did not argue that *Fields* is inapplicable or that the circumstances at Glen Mills had changed to render it a functional equivalent. *See Arend*, 648 N.W.2d at 748 (“A defendant has the burden of establishing that he is entitled to jail credit for a specific period of time.”). The only documents appellant relies

on to demonstrate the functional equivalence of Glen Mills to a jail, workhouse, or other correctional facility included his affidavit containing his personal observations and his school records. The latter did not contain any indication of the level of confinement or limitations imposed. And nothing in appellant's affidavit would suggest that Glen Mills is anything other than "a structured residential treatment program." *Fields*, 679 N.W.2d at 349.

Appellant's affidavit describes transport to Glen Mills as similar to transport to jail in that he was escorted to and from the airport. Glen Mills attendees follow a strict daily schedule, use a buddy system, must ask for permission to go certain places on the campus, and are monitored by way of counts and cameras throughout the day. Attendees are unable to leave the campus during their first year if they are not from the state, cannot have personal electronic devices, are limited to one phone call per week, and can only have visitors under certain conditions. Their mail is opened and inspected. Finally, Glen Mills staff have access to physical restraints and isolating rooms if attendees act out.

Although appellant compares intake at Glen Mills to intake at a jail, it is also similar to the registration process at many schools: he had a photograph taken for identification purposes, provided health and personal information on a questionnaire, and received a uniform. While at Glen Mills, appellant's bedroom was not locked. Appellant did have an opportunity to leave campus after the one-year limitation expired, and he "never acted up so he never spent any time in isolation."

We conclude, based on the record before us, that Glen Mills does not rise to the level of functional equivalence when compared to the circumstances at facilities for which

courts have granted custody credit in the past. The supreme court affirmed a district court's grant of jail credit for time spent in a residential treatment facility in *Asfaha*. 665 N.W.2d at 527-28. That case involved a living unit located within a treatment facility, and one could not enter or leave the building without a control-booth operator electronically opening three separately locked doors. *Id.* at 527. The facility had a secure, fenced exercise area behind the building and a gym that also had to be electronically opened by the control-booth operator. *Id.* Residents' cells would be locked at night and during crises. *Id.* All of *Asfaha's* daily life occurred in that locked living unit. *Id.* Residents who had medical appointments or court hearings were transported in physical restraints. *Id.*

This court reversed a denial of jail credit for a residential treatment facility in *State v. Razmyslowski*. 668 N.W.2d 681, 684 (Minn. App. 2003). The facility was surrounded by a security fence and access was controlled electronically through multiple locked ports. *Id.* Similar to Glen Mills, counts were performed regularly, and patients were monitored continuously, followed a strict daily schedule, and used a buddy system. *Id.* But patients at the *Razmyslowski* facility were also subject to pat searches and room searches, and were physically restrained for transportation and accompanied by armed guards. *Id.*

Both *Asfaha* and *Razmyslowski* involved a higher level of confinement and degree of limitations than Glen Mills. And appellant has not met his burden of showing that he should receive custody credit for Glen Mills where the supreme court has affirmed the opposite determination and where appellant presents no evidence suggesting Glen Mills is

anything other than a “a structured residential treatment program.” *Fields*, 679 N.W.2d at 349. The district court did not clearly err in its factual findings or misapply the law.

Affirmed.