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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-776**

State of Minnesota,
Respondent,

vs.

Gaylord Stewart Quinn,
Appellant.

**Filed September 6, 2011
Reversed and remanded
Larkin, Judge**

Chisago County District Court
File No. 13-CR-08-1215

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

Janet Reiter, Chisago County Attorney, Nicholas A. Hydukovich, Assistant Attorney
General, Center City, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Cathryn Middlebrook, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Stauber, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the district court's denial of his request for jail credit against
his sentence for criminal vehicular operation. Appellant requests jail credit for time that

he served under a constructive-civil-contempt order in a child-support proceeding while his criminal-vehicular-operation case was pending. Because there was an active warrant for appellant's arrest in the criminal case while appellant was incarcerated for constructive civil contempt in the child-support case, appellant's jail time in the civil case was served in connection with his criminal offense and he is entitled to an award of jail credit for that time. We therefore reverse and remand.

FACTS

On June 30, 2008, appellant Gaylord Stewart Quinn was charged in Chisago County district court with criminal vehicular operation. On August 31, 2009, the Chisago County district court issued a warrant for Quinn's arrest. The warrant is designated as "Body only," and it states: "IT IS HEREBY ORDERED THAT PRETRIAL RELEASE IS REVOKED, and that the Sheriff forthwith apprehend and bring the Defendant before the Court." On September 16, Quinn was incarcerated in the Scott County jail for constructive civil contempt due to his failure to pay child support. On November 23, the Chisago County district court quashed its warrant, and on December 5, Quinn was released from the Scott County jail.

In July 2010, Quinn was convicted of criminal vehicular operation in the Chisago County criminal case. The district court sentenced Quinn to a stayed prison term of 15 months and ordered him to serve 365 days in the local jail as a condition of probation. The district court awarded Quinn 32 days of jail credit against his sentence. Quinn moved the district court to clarify the jail-credit award, requesting credit for the time that

he served in the Scott County jail. The district court denied Quinn's request for jail credit, and this appeal follows.

DECISION

When the district court sentences a defendant, it must “[s]tate the number of days spent in custody in connection with the offense or behavioral incident being sentenced. That credit must be deducted from the sentence and term of imprisonment and must include time spent in custody from a prior stay of imposition or execution of sentence.” Minn. R. Crim. P. 27.03, subd. 4(B). The decision whether or not to award jail credit is not discretionary with the district court. *State v. Doyle*, 386 N.W.2d 352, 354 (Minn. App. 1986). “A district court’s decision whether to award credit is a mixed question of fact and law; the [district] court must determine the circumstances of the custody the defendant seeks credit for, and then apply the rules to those circumstances.” *State v. Johnson*, 744 N.W.2d 376, 379 (Minn. 2008). An appellate court reviews the district court’s factual findings underpinning a custody-credit determination for clear error and its legal conclusions de novo. *Id.* Because the jail-credit issue in this case is determined by applying precedent to undisputed facts, the standard of review is de novo.

Under Minn. R. Crim. P. 27.03, subd. 4(B), a defendant is entitled to credit for “the number of days spent in custody in connection with the offense or behavioral incident being sentenced.” The supreme court has held that where an offender is in custody in one county and there is an active warrant for the offender’s arrest in a second county, the offender is in custody in connection with the offense in the second county. *See State v. Dulski*, 363 N.W.2d 307, 309 (Minn. 1985) (reasoning that because “there

was a ‘hold’ placed on defendant in Carlton County because Ramsey County wanted custody of defendant after Carlton County proceedings were completed[,] [d]efendant . . . was in jail in Carlton County partly ‘in connection with’ the Ramsey County matter”); *State v. Patricelli*, 357 N.W.2d 89, 94 (Minn. 1984) (reasoning that the “defendant was in jail . . . ‘in connection with’ [a] Washington County offense [where] the record indicate[d] that one of the reasons he remained in jail was because of [a] Washington County ‘hold’ on him”).

Even though there was an outstanding body-only warrant for Quinn’s arrest in the Chisago County criminal case while he was jailed in Scott County, the district court concluded that Quinn is not entitled to credit for any time served in Scott County, reasoning that Quinn was jailed for constructive civil contempt rather than a criminal charge. The district court explained that because Quinn was not jailed in Scott County as the result of a criminal charge, it is not the “type” of incarceration contemplated by rule 27.03. The state urges this court to affirm the district court’s legal conclusion that Quinn is not entitled to jail credit for time served in Scott County. The state makes several arguments in support of its position, the majority of which focus, as did the district court, on the fact that the Scott County case was not a criminal case.

But under rule 27.03 and the relevant caselaw, the “type” of custody—civil versus criminal—is not a factor. Moreover, the distinction between jail time served in civil and criminal cases is a distinction without a difference. Although Quinn may have held “the keys to the jail cell” in his constructive-civil-contempt case, *see Mahady v. Mahady*, 448 N.W.2d 888, 890 (Minn. App. 1989), even if Quinn was released from custody under the

Scott County civil-contempt order, he would have remained in custody as a result of the body-only warrant in the Chisago County criminal case. Thus, he was in custody “in connection with” the Chisago County criminal offense.

In sum, despite the state’s argument that “[f]airness and equity¹ do not entitle a man who chooses not to comply with a civil child support order to accrue jail credit against a felony criminal sentence,” we cannot disregard rule 27.03 and precedent, which provide for an award of jail credit. We therefore hold that to the extent there was an active warrant for Quinn’s arrest in the Chisago County criminal case while he was incarcerated in Scott County, he was held in custody in connection with the Chisago County offense and is entitled to an award of jail credit for this time. Because the district court did not make factual findings regarding the existence or duration of the Chisago County warrant, we remand the case to the district court for findings regarding the duration of the Chisago County warrant in relation to the time that Quinn served in the Scott County jail and for a corresponding award of jail credit against his Chisago County sentence.

Reversed and remanded.

Dated:

Judge Michelle A. Larkin

¹ Because we determine that Quinn is entitled to jail credit under rule 27.03 and caselaw, we do not address his argument that he should be granted jail credit “based on fairness and equity.”