

DA 21-0480

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 115N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

DAVID JOEL EATON,

Defendant and Appellant.

APPEAL FROM: District Court of the Twenty-First Judicial District,
In and For the County of Ravalli, Cause No. DC 17-19
Honorable Jennifer B. Lint, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Gregory Hood, Assistant
Appellate Defender, Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Brad Fjeldheim,
Assistant Attorney General, Helena, Montana

Bill Fulbright, Ravalli County Attorney, Hamilton, Montana

Submitted on Briefs: May 10, 2023

Decided: June 13, 2023

Filed:



Clerk

Chief Justice Mike McGrath 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 David Eaton (Eaton) appeals the Judgment on Second Revocation of Suspended Sentence issued by the Twenty-First Judicial District Court on July 29, 2021. Eaton specifically challenges the court's decision to deny his request for elapsed time credit. We affirm.

¶3 On October 12, 2017, Eaton was convicted of Criminal Possession of Dangerous Drugs, a felony, in violation of § 45-9-102(4), MCA, and Criminal Possession of Drug Paraphernalia, a misdemeanor, in violation of § 45-10-103, MCA. On October 26, 2017, the District Court sentenced Eaton to a five-year commitment to the Department of Corrections (DOC), with two years suspended for the felony possession conviction, and 180 days in jail with all but 117 days suspended for the misdemeanor possession conviction, to run concurrently. The parties jointly stipulated that Eaton was entitled to 117 days of credit for time served. The court also imposed several conditions on Eaton during the suspended portion of his sentence and placed him under the supervision of the DOC's Adult Probation and Parole Bureau.

¶4 On July 13, 2020, the State filed a Report of Violation based on allegations that Eaton violated the conditions of his sentence. On July 21, 2020, the State filed a Petition for Revocation of Suspended Sentence alleging that Eaton violated the following conditions of his October 26, 2017 sentence: Condition 2—the State alleged that Eaton failed to reside at the residence reported to his probation officer; Condition 4—the State alleged that Eaton did not have employment at either of the businesses he reported; and Condition 5—the State alleged Eaton absconded probation by failing to stay in contact with his probation officer.

¶5 On September 24, 2020, the District Court held a contested adjudication hearing. The court found that Eaton violated the conditions of his October 26, 2017 sentence and, consequently, re-imposed the two-year suspended sentence with the same conditions as the original judgment and granted Eaton forty-eight days of credit for time served.

¶6 On February 24, 2021, the State filed a Report of Violation based on allegations that Eaton violated the conditions of his sentence. On March 21, 2021, the State filed a Second Petition for Revocation of Suspended Sentence alleging that Eaton violated the following conditions of his October 26, 2017 sentence: Condition 1—the State alleged that Eaton absconded probation by failing to report to his probation officer as directed; and Condition 5—the State alleged that Eaton failed to seek and maintain employment.

¶7 On July 6, 2021, the District Court held a contested adjudication hearing. The court found that Eaton violated the conditions of his October 26, 2017 sentence and, consequently, revoked his suspended sentence and imposed a two-year DOC commitment. The parties jointly stipulated that Eaton was entitled to 104 days of credit for time served.

The court did not grant Eaton credit for elapsed time served because “he was minimally compliant during his short time in the community.” On appeal, Eaton contends that the court erred by not granting him elapsed time credit for the period between November 5, 2020, and December 15, 2020.

¶8 A sentencing judge must consider credit for elapsed time when setting a revocation sentence for compliance violations. Section 46-18-203(7)(b), MCA; *see State v. Jardee*, 2020 MT 81, ¶ 7, 399 Mont. 459, 461 P.3d 108 (concluding that the 2017 version of the statute eliminated the discretion of district court judges when deciding whether to grant or deny credit for street time). After such consideration, the judge “shall . . . allow all of the elapsed time served without any record or recollection of violations as credit against the sentence.” Section 46-18-203(7)(b), MCA. A district court cannot deny credit for elapsed time “unless specific violations during the times in question are demonstrated.” *State v. Gudmundsen*, 2022 MT 178, ¶ 14, 410 Mont. 67, 517 P.3d 146.

¶9 In *Jardee*, this Court affirmed the district court’s decision to deny credit for elapsed time in light of Jardee admitting that he failed to report his correct address to probation and parole. *Jardee*, ¶ 12. We acknowledged that additional reasoning by the district court would have been helpful for the purpose of establishing whether and when Jardee violated the terms of his suspended sentence. *Jardee*, ¶ 12. Despite that limited analysis by the district court, this Court determined that it was not an error to deny credit for time served due to evidence in the record that Jardee was violating the terms of his suspended sentence. *Jardee*, ¶ 12.

¶10 In *State v. Johnson*, 2022 MT 216, 410 Mont. 391, 519 P.3d 804, Johnson contended that the district court erred in denying credit for elapsed time by failing to show evidence of him continually violating the conditions of his suspended sentence during the period in question. *Johnson*, ¶ 25. Yet, Johnson acknowledged that they had failed to comply with a condition prior to the period and this Court concluded that Johnson made no demonstrated effort to do so during the period. *Johnson*, ¶ 25. Johnson also failed to take proactive steps to comply with other conditions during the period. *Johnson*, ¶ 25. Consequently, we held that the court did not err by denying credit for elapsed time. *Johnson*, ¶ 25.

¶11 A review of Eaton’s actions in and around the period for which he seeks credit for elapsed time demonstrates that he persistently violated the conditions of his sentence and, therefore, is not entitled to any credit for the period between November 5, 2020, and December 15, 2020.

¶12 On November 4, 2020, a day before the period in question, Eaton tested positive for marijuana in a urine test conducted by his parole officer, Keegan Rothie (Officer Rothie). Officer Rothie told Eaton that he needed to obtain employment and that he would follow up with Eaton in the coming weeks. Eaton testified that he did work around the house for his mother in exchange for rent—Officer Rothie was aware of this arrangement. Eaton also testified that he had an employment opportunity starting in February 2021. On November 19, 2020, Eaton was not present at his home when Officer Rothie visited. On December 1, 2020, Officer Rothie instructed Eaton to report to his office. Eaton refused to do so and alleged that he had symptoms of COVID-19. However, he was unable to produce any documentation of his symptoms. On December 7, 2020, Officer Rothie called

and texted Eaton to see if he had obtained any test results. Eaton did not answer any of the calls; he later texted that the hospital refused to test him. On December 8, 2020, Eaton reported to Officer Rothie's office and still lacked any documentation of COVID-19. Throughout this period, Officer Rothie could not leave voicemails with Eaton because his mailbox was full.

¶13 At the hearing, the District Court concluded that Eaton had provided “too many excuses” for his actions during his period of supervision. The court observed that Eaton claimed his phone was out of minutes, that parole officers failed to provide him with appointment cards, that someone had taken his mail, and that he had COVID-19. The court further observed that Eaton failed to comply with Officer Rothie's December 1, 2020 instruction that Eaton obtain documentation of COVID-19. From these “excuses,” the court summarized that Eaton was minimally communicative and “not consistently responsive.” The court then found that Eaton had not been in substantial compliance with his conditions, specifically his obligation to report and communicate.

¶14 Here, as in *Jardee*, additional analysis by the District Court would have been helpful in evaluating Eaton's compliance with the terms of his suspended sentence. The court's findings and evidence in the record nevertheless establish that—as in *Johnson*—for the period in question Eaton persistently failed to comply with his conditions. The court did not err by denying Eaton's request for elapsed time credit.

¶15 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.

¶16 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ INGRID GUSTAFSON

/S/ LAURIE McKINNON

/S/ JAMES JEREMIAH SHEA

/S/ JIM RICE