

DA 22-0048

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 243

STATE OF MONTANA,

Plaintiff and Appellee,

v.

SKY M. LITTLE COYOTE,

Defendant and Appellant.

APPEAL FROM: District Court of the Sixteenth Judicial District,
In and For the County of Rosebud, Cause No. DC-2009-12
Honorable Nickolas C. Murnion, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Alexander H. Pyle, Assistant Appellate
Defender, Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Roy Brown, Assistant
Attorney General, Helena, Montana

C. Kristine White, Rosebud County Attorney, Hanna E. Schantz, Special
Deputy County Attorney, Forsyth, Montana

Submitted on Briefs: November 1, 2023

Decided: December 19, 2023

Filed:


Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Defendant and Appellant Sky M. Little Coyote (Little Coyote)¹ appeals from the Order of Adjudication and Disposition on State’s Petition for Revocation of Suspended Sentence Dated August 31, 2021, issued by the Sixteenth Judicial District Court, Rosebud County, on December 20, 2021. Little Coyote asserts that had the time he spent incarcerated been accurately calculated and properly credited, his sentence expired prior to the State’s subject revocation petition such that the District Court lacked the authority to revoke or impose a disposition.²

¶2 We restate the issue on appeal as follows:

Whether Little Coyote was entitled to credit for the time he served in Federal prison concurrent to the underlying sentence imposed herein such that his sentence expired prior to the State filing its revocation petition.

We reverse and remand for dismissal of the State’s Petition for Revocation dated August 31, 2021.

FACTUAL AND PROCEDURAL BACKGROUND

¶3 Little Coyote, now 32 years old, has churned in the criminal justice system for nearly 15 years on this case. The timeline of this case is as follows:

¹ Though the caption of the case as filed by the State reads LittleCoyote, Little Coyote’s last name is two words.

² Little Coyote asserts, in the alternative to his allegation that his sentence expired prior to the State filing a revocation petition, that the District Court illegally failed to roll over two days of credit that were previously acknowledged in his 2020 revocation. He also asserts, and the State concedes, the District Court illegally restricted his eligibility for supervision in the community during his DOC sentence. As we resolve this matter on his primary allegation, we do not need to address his alternative claim or whether the District Court illegally restricted his eligibility for supervision in the community during his DOC sentence.

- March 12, 2009 - Information filed charging Little Coyote with burglary and theft which were committed in 2008 when he was 17 years old.
- February 21, 2013 - Amended Information is filed again charging the burglary and theft but correcting the location (to Ashland, MT, not Colstrip, MT, as alleged in the initial Information) of the theft charge.
- May 29, 2014 - Judgment and Sentence issued imposing a six-year Montana Department of Corrections (DOC) commitment with all but 92 days suspended with 92 days credit for time served, to run *concurrent* to Federal cause CR10-15-BLG-SW.
- July 10, 2014 - Petition to Revoke filed with supporting affidavit dated June 30, 2014.
- December 4, 2014 - Order of Adjudication and Sentence issued revoking the six-year suspended sentence and imposing a six-year commitment to the DOC, with three-years suspended together with 92 days credit previously granted plus an additional 57 days credit for time served since the prior sentence was imposed.
- July 13, 2017 - Little Coyote is arrested on “state and Federal warrants.” Federal revocation hearing held resulting in revocation with imposition of a 10-month incarceration period (which would expire 5/13/2018).
- March 6, 2018 - State files its second Petition to Revoke Suspended Sentence.
- May 13, 2018 - Little Coyote is released from federal custody upon expiration of the 10-month commitment.
- December 16, 2019 - State files an Amended Petition for Revocation of Suspended Sentence seeking revocation based on new charges.
- July 29, 2020 - parties enter into Agreement for Adjudication and Disposition. Little Coyote agrees to enter admissions to Violation 1—Failure to Report/Absconding set forth in the Report of Violation (ROV) of February 21, 2018, and Violation 2—Law and Conduct set forth in ROV Addendum of August 20, 2019, and the State agrees to recommend the court revoke the three-year suspended sentence and re-impose a three-year suspended sentence plus give Little Coyote 417 days of jail credit (for 3/20/19 through 2/26/20=342 days and 4/30/20 through 7/13/20=75 days) plus 38 days street credit (2/27/20 through 3/20/20=22 days plus 7/14/20 through 7/29/20=16 days) for a total of 455 days credit.
- August 5, 2020 - Order of Adjudication and Revocation issued. The District Court revoked the suspended time for burglary and re-imposed a three-year suspended commitment to the DOC and provided 455 days credit leaving 1 year 275 days (640 days) remaining. This credit did not include the 321 days Little Coyote was incarcerated on the federal matter from July 13, 2017, to May 13, 2018, to which this sentence was running *concurrent*. Little Coyote did not contest the time credited and did not appeal. Had he received an additional 321 days credit for the Federal time from July 13, 2017, to May 13, 2018, his disposition would expire on June 9, 2021.

- September 1, 2021 - the State files its third revocation petition, signed by the State on August 31, 2021.
- November 9, 2021 - Little Coyote makes an initial appearance on the third Petition for Revocation denying all violations.
- November 22, 2021 - the adjudication hearing is convened. Little Coyote raises complaints about his counsel. Little Coyote does not appear to understand the hearing issues and makes statements concerning for the presence of mental health or cognition issues. For example, at one point while explaining to the District Court why he is not ready to proceed he advises: “You know I – I wrote you know a letter to Jerusalem you know asking for you know support and prayer you know about these matters you know I – you know Ryante [sic] you know sent some letters to the White House and to the you know the Capital State you know of Montana you know I’m just you know.” The District Court continues the adjudication hearing to November 29, 2021.
- November 29, 2021 - the adjudication hearing is again convened. Little Coyote again expresses issues with counsel. The hearing proceeds and the District Court finds Violation 1—Law and Conduct, Violation 2—Failure to Complete Chemical Dependency Evaluation, and Violation 4—Failure to Follow Directions for Cognitive Principles & Restructuring Program are proven and Violation 3—Failure to Complete Mental Health Evaluation is not proven.
- December 21, 2021 - the disposition hearing is convened. Different counsel appears for Little Coyote filling in for counsel that appeared with him at the adjudication hearings of November 22 and 29, 2021. This is Little Coyote’s 7th different counsel since the outset of this case. Little Coyote’s counsel requests the District Court revoke the suspended sentence and impose a three-year DOC commitment with no time suspended and to give Little Coyote 689 days of credit for time served (591 jail credit plus 98 days street credit). Again, this credit did not include the 321 days Little Coyote was incarcerated on the federal matter from July 13, 2017, to May 13, 2018, to which this sentence was running concurrent and neither defense counsel nor the State advise the court of his concurrent 10-month Federal incarceration. The District Court revokes the suspended sentence for burglary and imposes a three-year DOC commitment with no time suspended and gives Little Coyote 689 days of credit for time served (591 jail credit plus 98 days street credit) concurrent to Little Coyote’s Yellowstone County cause no. DC 2019-346.
- December 20, 2021 - the District Court issues its written Order of Adjudication and Disposition on State’s Petition for Revocation of Suspended Sentence Dated August 31, 2021, revoking the suspended sentence for burglary and imposing a three-year DOC commitment with 689 days credit, concurrent to Little Coyote’s Yellowstone County cause no. DC 2019-346. The District Court also orders Little Coyote to serve at least six months of supervised pre-release before his release into the community.

STANDARD OF REVIEW

¶4 A criminal sentence is reviewed for legality. *State v. Patterson*, 2016 MT 289, ¶ 9, 385 Mont. 334, 384 P.3d 92. “We review the imposition of criminal sentences to determine if they are statutorily authorized.” *Patterson*, ¶ 9 (citations omitted). Montana’s statute for habeas corpus relief provides that a court may inquire into the cause of restraint or incarceration and, if illegal, correct the wrongful imprisonment or restraint. Section 46-22-101(1), MCA. Incarceration of an individual pursuant to an invalid sentence represents a grievous wrong and a miscarriage of justice warranting habeas corpus relief. *Lott v. State*, 2006 MT 279, ¶ 22, 334 Mont. 270, 150 P.3d 337.

DISCUSSION

¶5 *Whether Little Coyote was entitled to credit for the time he served in Federal prison concurrent to the underlying sentence imposed herein such that his sentence expired prior to the State filing its revocation petition.*

¶6 Little Coyote asserts that when his time served is accurately calculated and properly credited his revocation sentence is illegal because the State failed to timely file its petition to revoke prior to the expiration of his sentence. When Little Coyote was originally sentenced on the burglary in 2014, the sentence was pronounced to run concurrent with his federal sentence. Thus, his unrelated state and federal sentences merged with each other such that he simultaneously served his suspended sentence in this case while he was incarcerated on his federal case. Little Coyote further asserts, pursuant to § 46-18-203(7)(b), MCA, if a suspended sentence is revoked, “[c]redit must be allowed for time served in a detention center” which includes periods of detention, including federal detention, that an offender serves pursuant to concurrent sentences. Little Coyote was

incarcerated in a federal detention center from July 13, 2017, to May 13, 2018—a period of 321 days. Little Coyote asserts when this detention time is properly credited, his sentence on the burglary herein expired on June 9, 2021, nearly three months prior to the State’s petition seeking revocation.

¶7 Citing *State v. Adams*, 2013 MT 189, 371 Mont. 28, 305 P.3d 808, as authority, the State asserts that Little Coyote is bound by the July 29, 2020 Agreement for Adjudication and Disposition, wherein he agreed to the credit he received in exchange for the benefit of his bargain.

¶8 The issues and arguments presented in *Adams* are significantly different than those presented here. Unlike this case, *Adams* involved two cases in which the sentences were never ordered to run concurrently and did not involve calculating or crediting time served. Adams, while a juvenile, committed numerous offenses that would have constituted criminal offenses if committed by an adult which were ultimately adjudicated under one cause, DJ 04-88. He was committed to DOC to age 18 or sooner released. In a short period of time following release, he committed several probation violations resulting in jurisdiction being transferred to district court and supervisory responsibility transferred to adult probation to age 21. Adams then stole two vehicles and items in one those vehicles resulting in him being charged with felony theft and two counts of misdemeanor theft in cause no. DC 06-509. *Adams*, ¶¶ 4-5.

¶9 The State also filed a petition to revoke Adams’ probation in DJ 04-88 based on the new charges. *Adams*, ¶ 5. Adams then entered into a plea agreement which was likewise quite different than the agreement entered into here in that it involved resolution of two

causes and negotiation of a sentence for new offenses. Adams entered into an agreement to resolve both the new charges in DC 06-509 and the revocation in DJ 04-88 wherein he would plead guilty to felony theft and the State agreed to dismiss the two misdemeanor charges. The parties further agreed a three-year commitment to DOC, all suspended, consecutive to the revocation in DJ 04-88 was appropriate. The district court accepted the plea agreement and imposed the jointly recommended sentence. Adams was revoked on the DJ 04-88 matter and committed to DOC until his 21st birthday. Adams was ultimately released on his 21st birthday in November 2009 to begin serving his sentence in DC 06-509. *Adams*, ¶¶ 6-8. In January 2012, the State filed a revocation petition in DC 06-509, asserting violation of terms of his supervision. Adams then filed a motion to dismiss the petition to revoke, not based on inaccurate calculation and application of time served, but rather on arguments relating to the different nature of youth court versus district court causes. *Adams*, ¶ 9. Adams argued the district court did not have authority in 2007 to order his new adult criminal sentence to run consecutive to the disposition in DJ 04-88, asserting an adult sentence cannot be ordered to run consecutively to a juvenile disposition because a youth court’s disposition is civil in nature and thus is not a sentence and does not fall within the statutory criteria of § 46-18-401(4), MCA—that “[s]eparate sentences for two or more offenses must run consecutively unless the court otherwise orders[.]” *Adams*, ¶ 13. Ultimately, Adams’s challenge was denied as untimely. As we explained:

[A] sentencing court’s authority to re-sentence a criminal defendant based upon an illegal sentence depends upon *when* the illegal sentence is discovered and challenged. If the illegal sentence is challenged while the defendant is serving the sentence, the court has the authority to correct the sentence by imposing a sentence that was statutorily authorized . . . *If*,

however, the illegal sentence is challenged during a revocation proceeding held while the defendant is serving the suspended portion of the illegal sentence, the court, upon sentencing in the revocation proceeding, is constrained by the particulars of § 46-18-203(7), MCA.

Adams, ¶ 18 (quoting *State v. Seals*, 2007 MT 71, ¶ 15, 336 Mont. 416, 156 P.3d 15) (emphasis in original).

¶10 Here, although Little Coyote has brought an appeal, his challenge is to the accurate calculation and proper crediting of time served, basically asserting he is illegally being held as he has not been given credit as required by § 46-18-203(7), MCA, for the time he served. The Department of Corrections is charged with maintaining and reporting accurate information on every felony offender as to time served. *See, e.g.*, State of Montana Department of Corrections Policy Directive No. 1.5.5 (requiring DOC to maintain offender records in compliance with all state and federal laws and to verify the accuracy and reliability of those records). At the time the parties entered into the Agreement for Adjudication and Disposition and at disposition, it is clear the parties and the District Court were functioning under the mistaken belief that Little Coyote had served only 455 days, rather than the actual 776 days he had served. While the parties did enter into an agreement, the record suggests the agreed calculation of time served was based on inaccurate information. We are not persuaded by the argument that Little Coyote be denied credit for time he spent incarcerated due to inaccurate calculation of the time he served and mutual mistake of the parties in believing he was still serving a suspended sentence at the time the revocation was filed. Although Little Coyote filed an appeal and not a habeas petition, we follow our reasoning in *Lott*, that to uphold a disposition on a revocation petition that would

have been untimely had Little Coyote’s time served been accurately calculated and applied, would represent a grievous wrong and miscarriage of justice—his challenge to its legality in his appeal warrants relief. *Lott*, ¶ 22. We therefore deem his claim to be a request for habeas corpus relief and grant it to this extent. Upon accurate calculation and proper credit of time served, Little Coyote’s sentence expired on June 9, 2021, nearly three months before the State filed its Petition for Revocation on September 1, 2021. As such, the disposition imposed orally on December 15, 2021, and memorialized in writing on December 20, 2021, is illegal as the District Court lacked authority to revoke or impose a disposition. *See State v. Ellsworth*, 2023 MT 8, ¶¶ 12-13, 411 Mont. 213, 523 P.3d 527.

CONCLUSION

¶11 We reverse and remand this matter to the District Court to dismiss the Petition for Revocation filed September 1, 2021.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH
/S/ LAURIE McKINNON
/S/ JAMES JEREMIAH SHEA
/S/ DIRK M. SANDEFUR