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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1763**

Jonathon Duane Taylor Hanson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed August 27, 2018
Affirmed
Reilly, Judge**

Stearns County District Court
File Nos. 73-CR-14-10739, 73-CR-15-1266

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Janelle P. Kendall, Stearns County Attorney, Kyle R. Triggs, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

Considered and decided by Kirk, Presiding Judge; Reilly, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant Jonathon Duane Taylor Hanson challenges a district court order denying his request for additional jail credit against his attempted-murder sentence. We affirm.

FACTS

In December 2014, appellant was involved in a shooting in a motel parking lot, resulting in injury to another individual. Appellant was prohibited from possessing a firearm due to a prior crime-of-violence conviction. During the course of the investigation into the shooting, police officers uncovered evidence that appellant was prostituting a 16-year-old juvenile at the motel. The state charged appellant in two separate complaints for (1) attempted murder, assault with a dangerous weapon, and ineligible possession of a firearm, and (2) promoting the prostitution of a minor, receiving profits from the prostitution of a minor, and engaging in sex trafficking of a minor.

In January 2015, the district court sentenced appellant to 36 months in prison on a 2014 assault charge. The release date for this assault conviction was September 29, 2016. In August 2016, appellant entered a plea of guilty to attempted murder, one count of second-degree assault, and ineligible possession of a firearm. He also entered a plea of guilty to receiving profits from the prostitution of a child under the age of 18. The remaining charges in each case were dismissed.

In a plea agreement, the state and the defense agreed that appellant would receive a sentence of 206 months in prison for the attempted-murder conviction. The parties agreed that the 206-month sentence for attempted murder would run consecutively to the 36-month assault sentence. The sentences on the remaining offenses would run concurrently with the assault sentence. On November 1, 2016, the district court sentenced appellant on the attempted murder charge and remaining counts in accordance with the plea agreement. The district court awarded appellant 33 days of jail credit on the attempted-murder

conviction, representing the difference between appellant's release date for his assault sentence, September 29, 2016, and the November 1, 2016 sentencing date. Appellant also received 691 days of jail credit for the remaining offenses because those sentences were concurrent with the assault. Appellant filed a motion for additional jail credit, which the district court denied. This appeal follows.

D E C I S I O N

Appellant argues that the district court erred by denying his request for additional jail credit against his attempted-murder sentence. A challenge to a district court's award of jail credit "is a mixed question of fact and law." *State v. Johnson*, 744 N.W.2d 376, 379 (Minn. 2008). "[T]he court must determine the circumstances of the custody the defendant seeks credit for, and then apply the rules to those circumstances." *Id.* We review legal conclusions de novo and factual findings for clear error. *Id.* The granting of jail credit is not discretionary with the district court. *State v. Hadgu*, 681 N.W.2d 30, 32 (Minn. App. 2004), *review denied* (Minn. Sept. 21, 2004). Nevertheless, the defendant "carries the burden of establishing that he is entitled to jail credit. . . ." *State v. Willis*, 376 N.W.2d 427, 428 n.1 (Minn. 1985).

When pronouncing sentence, the district court must "[s]tate the number of days spent in custody in connection with the offense or behavioral incident being sentenced." Minn. R. Crim. P. 27.03, subd. 4(B). A criminal defendant is entitled to jail credit for time spent in custody "in connection with the offense or behavioral incident being sentenced." *Id.* This remains the rule even when the time served is in connection with two concurrent

sentences, but it is not the rule for consecutive sentences. *State v. Clarkin*, 817 N.W.2d 678, 685-86 (Minn. 2012).

Under the terms of the plea agreement, the parties agreed that appellant’s 206-month attempted-murder sentence would run consecutively to his 36-month assault sentence. The remaining sentences for receiving profits from prostitution, second-degree assault, and ineligible firearm possession would run concurrently with appellant’s September 2014 assault conviction. At sentencing, the district court adhered to this agreement and awarded appellant 691 days of jail credit for receiving profits from prostitution, second-degree assault, and firearm possession. Additionally, the district court awarded appellant 33 days of jail credit for the attempted-murder conviction—the difference between appellant’s September 29, 2016 release date for his assault sentence and the November 1, 2016 sentencing date.¹ “In situations of consecutive sentences, the jail credit should be applied to only the first sentence . . . because to do otherwise would constitute ‘double credit.’” *State v. Cameron*, 603 N.W.2d 847, 848 (Minn. App. 1999) (citing *State v. Patricelli*, 357 N.W.2d 89, 94 (Minn. 1984)). Thus, “[t]o avoid double credit when applying jail credit to consecutive sentences, the court must apply the jail credit to the first sentence only.” *Townsend v. State*, 834 N.W.2d 736, 740 n.3 (Minn. 2013) (citing Minn. Sent. Guidelines 3.C.2(b) (2012)). The district court properly applied the law in imposing sentence.

Appellant argues that each of his sentences should have run concurrently and that he is entitled to 691 days of jail credit for each conviction. Neither the law nor the factual

¹ Appellant was in custody pending sentencing for his attempted-murder conviction.

record supports this claim. At sentencing, the district court stated that the attempted-murder sentence was consecutive to the assault sentence, while the remaining three sentences were concurrent with the assault sentence. To award appellant additional jail credit on his attempted-murder conviction would result in a “double credit” on his sentences. *See Effinger v. State*, 380 N.W.2d 483, 489 (Minn. 1986) (cautioning against double credit for consecutive sentences). Appellant failed to satisfy his burden of establishing that he is entitled to additional jail credit. Accordingly, we conclude that the district court did not err by denying appellant’s request.

Affirmed.