STATE OF MINNESOTA

IN SUPREME COURT

A18-0326

Court of Appeals

Hudson, J.
Concurring, Thissen, J.

State of Minnesota,

Respondent,

vs.

Filed: May 22, 2019
Office of Appellate Courts

Misty Kay Roy,

Appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

David L. Hanson, Beltrami County Attorney, David P. Frank, Chief Assistant County Attorney, Bemidji, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public Defender, Saint Paul, Minnesota, for appellant.

S Y L L A B U S

A criminal defendant is not entitled to custody credit for time spent in the custody of the Red Lake Nation unless that custody was solely in connection with a Minnesota offense.

Affirmed.

O P I N I O N

HUDSON, Justice.

This case involves the issue of whether a defendant can receive custody credit against her Minnesota sentence for time spent in the custody of the Red Lake Nation. Appellant Misty Kay Roy was convicted of third-degree controlled-substance crime in 2011 in Beltrami County District Court. The district court stayed imposition of her sentence and placed her on probation. In 2017, while she was still on probation for her Minnesota offense, Roy was convicted of two gross misdemeanors in Red Lake Tribal Court. She served her sentence in the Red Lake Detention Center and was released directly to Beltrami County, because the district court had revoked her stay. Roy asked the district court to grant her credit for her incarceration time in the Red Lake Detention Center against her district court sentence for third-degree controlled-substance crime. The district court held that Roy was not entitled to custody credit for time served in Red Lake, and the court of appeals affirmed. We hold that Roy is not entitled to custody credit against her Minnesota sentence for the time she spent in Red Lake custody, because her Minnesota conviction was not the sole reason for her Red Lake custody. Accordingly, we affirm.

FACTS

In 2011, Roy was charged with third-degree controlled-substance crime, Minn. Stat. § 152.023, subd. 1 (2018), in Beltrami County District Court after she sold Oxycodone to a confidential informant. Roy pleaded guilty, and the district court convicted her of third-degree controlled-substance crime. The district court stayed imposition of sentence and placed Roy on probation for 20 years.

The Red Lake Band of Chippewa Indians is a federally recognized Indian tribe with a reservation within Minnesota. On July 15, 2017, Roy was charged in Red Lake Tribal Court with committing two gross misdemeanors while on the Red Lake Reservation. Roy was convicted of both counts and released pending sentencing. On September 14, 2017, Roy's corrections agent filed a probation-violation report, alleging that Roy violated her probation, in part by failing to remain law-abiding, based on her Red Lake convictions. On September 15, 2017, the district court revoked the stay of imposition of sentence for Roy's 2011 conviction. The court ordered that Roy be apprehended and taken into custody. Roy was not, however, immediately taken into Beltrami County custody. Roy was sentenced in Red Lake Tribal Court on October 5, 2017, and her sentence at the Red Lake Detention Center began on October 22. Roy was released directly from Red Lake custody to Beltrami County custody on November 12, 2017.

On November 27, 2017, Roy appeared in district court and requested that her 2011 sentence be executed and that she be given custody credit for the time she served from October 22, 2017, to November 12, 2017 (21 days) in the Red Lake Detention Center. The district court sentenced Roy to 21 months in prison. It granted Roy 86 days of custody credit, which included the time she had previously served in Beltrami County detention from 2011 to 2017, as well as the time she had served since being taken into custody by Beltrami County on November 12, 2017. But the court denied Roy credit for the time she served in the Red Lake Detention Center. The court said that it was the law, and "not just a policy," to decline to extend credit for time served in Red Lake detention because Red Lake is a sovereign nation.

The court of appeals affirmed. *State v. Roy*, 920 N.W.2d 227, 232 (Minn. App. 2018). Applying the interjurisdictional rule for jail credit, the court of appeals held that Roy was not entitled to credit on her Minnesota sentence for time she spent in the Red Lake Detention Center because that time was not being served solely in connection with a Minnesota offense. *Id.* at 230–31. We granted Roy's petition for review.

ANALYSIS

We must decide whether Roy should receive credit against her Minnesota sentence for the time she spent in the Red Lake Detention Center. The district court's decision whether to award custody credit "is a mixed question of fact and law; the 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). We review the factual findings of the district court for clear error, but we review questions of law, such as the interpretation of the rules of criminal procedure, de novo. *Id.*

A defendant bears the burden of establishing that she is entitled to credit for time spent in custody. *State v. Clarkin*, 817 N.W.2d 678, 687 (Minn. 2012). The district court does not have discretion on whether to award custody credit. *Johnson*, 744 N.W.2d at 379. A criminal defendant is entitled to custody credit for time spent in custody "in connection with the offense or behavioral incident being sentenced." Minn. R. Crim. P. 27.03, subd. 4(B); *see also* Minn. Stat. § 609.145, subd. 2 (2018) ("A sentence of imprisonment upon conviction of a felony is reduced by the period of confinement of the defendant following the conviction and before the defendant's commitment to the commissioner of corrections for execution of sentence unless the court otherwise directs."). This "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).

When determining whether to award custody credit, we distinguish between intrajurisdictional custody (custody within Minnesota) and interjurisdictional custody (custody outside of Minnesota). In evaluating credit for intrajurisdictional custody, we seek to avoid four potential concerns: "de facto conversion of a concurrent sentence into a consecutive sentence; indigent persons serving effectively longer sentences as a result of their inability to post bail; irrelevant factors . . . affecting the length of incarceration; and manipulation of charging dates by the prosecutor so as to increase the length of incarceration." *Johnson*, 744 N.W.2d at 379.

We apply a different test for determining interjurisdictional custody credit. For a defendant to receive credit on a Minnesota sentence for time spent in another jurisdiction's custody, the defendant's Minnesota offense must be "the sole reason" for the custody. *State v. Mattson*, 376 N.W.2d 413, 416 (Minn. 1985); *see also State ex rel. Linehan v. Wood*, 397 N.W.2d 341, 342 (Minn. 1986); *State v. Willis*, 376 N.W.2d 427, 428–29 (Minn. 1985); *State v. Brown*, 348 N.W.2d 743, 748 (Minn. 1984).

Roy argues that, on these facts, we should apply our intrajurisdictional rule rather than the interjurisdictional rule. A threshold question before we can apply either rule is whether the Red Lake Nation is within the jurisdiction of the State of Minnesota. It is not.

Although—as Roy argues—the Red Lake Nation is within the borders of the state of Minnesota, it is an independent sovereign nation with jurisdiction over the members of

its tribe. *See Red Lake Band of Chippewa Indians v. State*, 248 N.W.2d 722, 726 (Minn. 1976). The federal government specifically exempted Red Lake from Minnesota's criminal jurisdiction "over offenses committed by or against Indians in the areas of Indian country," 18 U.S.C. § 1162(a) (2012), because Red Lake never ceded jurisdiction.[1] The Red Lake Nation has jurisdiction to prosecute tribal members for crimes committed within the reservation's boundaries, and Minnesota does not. *Id.* Because the Red Lake Nation is a separate sovereign jurisdiction, the interjurisdictional rule applies.

Under the test for determining interjurisdictional custody credit, a defendant can only receive credit for time spent in the custody of another jurisdiction if the time was served solely in connection with the Minnesota offense. *Mattson*, 376 N.W.2d at 416. It is undisputed that the time Roy spent in the Red Lake Detention Center was in connection with her two Red Lake convictions. Therefore, Roy's Minnesota conviction cannot be the sole reason for her detention, and the time she spent in the Red Lake Detention Center does not qualify for custody credit. *See Willis*, 376 N.W.2d at 428–29 (holding that the defendant was not entitled to custody credit for time he was held in Illinois "both on the Illinois charges and on a Minnesota hold").

Roy's argument that she is entitled to custody credit under the interjurisdictional rule clearly fails. Roy makes two arguments in an attempt to avoid this result. First, she

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[1] This federal statute is the codification of Public Law Number 83-280, 67 Stat. 588, 588–90, commonly known as Public Law 280, which was a transfer of legal authority from the federal government to state governments that changed the division of jurisdiction among tribal, federal, and state governments. 18 U.S.C. § 1162(a). In Public Law 280, Minnesota was granted criminal jurisdiction over most offenses committed on all the tribal lands in Minnesota except Red Lake. *See id.*

argues that denying her credit for the time she served in the Red Lake Detention Center would transform her sentences into de facto consecutive sentences and would increase the length of her incarceration based on irrelevant factors that are subject to manipulation. But these are factors we consider when we apply the intrajurisdictional custody credit rule, not the interjurisdictional rule. *Compare Johnson*, 744 N.W.2d at 379 (applying the intrajurisdictional rule), *with Willis*, 376 N.W.2d at 428–29 (applying the interjurisdictional rule). We have previously refused to apply the factors from the intrajurisdictional custody credit test to a case involving interjurisdictional custody credit. *See Linehan*, 397 N.W.2d at 342. We decline to consider those factors here.

Second, Roy argues that even if the interjurisdictional rule applies, it is not a "hard and fast rule[]." She claims that we have awarded credit against a Minnesota sentence for time that a defendant spent in custody in connection with another jurisdiction's charges if both jurisdictions "prefer concurrent sentencing and neither says a sentence is to be run consecutive." As support, Roy cites *State v. Wakefield*, 263 N.W.2d 76, 77 (Minn. 1978).

In *Wakefield*, the defendant was first sentenced for a federal offense and was then sentenced for a Minnesota offense. *Id.* The Minnesota district court did not specify whether his Minnesota sentence was concurrent or consecutive to his federal sentence. *Id.* We "h[e]ld in this situation that the state sentence must be presumed to run concurrently with the Federal sentence when there has been no specific determination by the trial court." *Id.*

Here, Roy's Red Lake Tribal Court sentence was imposed on October 5, 2017, and Beltrami County District Court imposed an executed 21-month sentence for third-degree

controlled-substance crime on November 27, 2017. Roy argues that because the district court did not specify whether her Minnesota sentence was concurrent or consecutive, it is presumed to be concurrent. *See* Minn. Stat. § 609.15, subd. 1(a) (2018). Just like in *Wakefield*, Roy argues that she is entitled to custody credit against her Minnesota sentence for the time she spent in the Red Lake Detention Center.

We do not find *Wakefield* persuasive because *Wakefield* is not a custody credit case. It involved the related, but separate issue, of concurrent versus consecutive sentencing. In *Wakefield*, the question was whether a defendant who had a second sentence imposed (his Minnesota sentence) *while* he was serving another sentence (his federal sentence) should have these sentences run concurrently, rather than having to serve the second sentence after the first one was complete. 263 N.W.2d at 77. *Wakefield* did not address what custody credit the defendant should have received for any time he spent in federal custody before receiving his Minnesota sentence. *See id.* at 77–78.

Moreover, it is unclear what the district court could have made Roy's Minnesota sentence concurrent or consecutive *to.* In order for a sentence to be concurrent or consecutive, the defendant must be subject to another sentence at the time the court imposes the second sentence. *See* Minn. Stat. § 609.15, subd. 1(a) (stating that "when separate sentences of imprisonment are imposed on a defendant for two or more crimes . . . or when a person who is under sentence of imprisonment in this state is being sentenced to imprisonment for another crime," the court must state whether the later "sentences shall run concurrently or consecutively"); Minn. Sent. Guidelines 2.F (stating that the presumption for concurrent sentencing applies "when an offender is convicted of multiple

current offenses, or when there is a prior felony sentence that has not expired or been discharged"). When the district court sentenced Roy to 21 months in prison, she had been released from the Red Lake Detention Center. At that time, the district court sentenced Roy for only one offense. Roy has not demonstrated that she was subject to any other sentence when the district court imposed this sentence. *Wakefield* therefore does not apply to the circumstances present here.

Given the unique and sovereign status of the Red Lake Nation, the interjurisdictional rule applies to Roy's custody credit calculation.[2] Under that rule, Roy is not entitled to custody credit against her Minnesota sentence for the time she spent in the Red Lake Detention Center.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

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[2] Roy also argues that the district court's denial of credit violated her right to equal protection under the law because non-Indian probationers who committed the same conduct on the reservation would have received credit against their sentences. Roy did not raise an equal protection claim before the district court. We decline to reach Roy's equal protection claim because she raised it for the first time on appeal. *See State v. Sorenson*, 441 N.W.2d 455, 457 (Minn. 1989).

CONCURRENCE

THISSEN, Justice (concurring).

I concur in the decision that appellant Misty Roy is not entitled to jail credit on her 2011 third-degree controlled-substance conviction for the time she spent in the custody of the Red Lake Nation in 2017. I agree that the time spent in the custody of the Red Lake Nation was not "in connection with" the 2011 third-degree controlled-substance conviction. Accordingly, Roy is not entitled to jail credit under Minn. R. Crim. P. 27.03, subd. 4(B) (stating that a criminal defendant is entitled to custody credit for time spent in custody "in connection with the offense or behavioral incident being sentenced"). I write separately to make clear what the court does not—and cannot—decide today.

Our decisions on jail credit have evolved significantly over the last several decades. Minnesota Rule of Criminal Procedure 27.03, subd. 4(B), was adopted in 1975. The current rule provides:

> When pronouncing sentence the court 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 . . . .

(Emphasis added.)[1] Our early 1980s "jail credit" decisions focused narrowly on Rule 27.03 and the question the court addresses today: Was the defendant held in custody "in connection with" the offense being sentenced? *See, e.g.*, *State v. Brown*, 348 N.W.2d 743,

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[1] Before implementation of Rule 27.03, we did not recognize a right to jail credit for time held in custody in connection with the offense being sentenced. *See State v. Saldana*, 246 N.W.2d 37, 40 (Minn. 1976). Notably, in *Saldana* the sentence imposed ran concurrently with the sentence for another unrelated offense. *Id.*

747–48 (Minn. 1984) (remanding to give credit for time spent in Illinois jail when the district court found that time was spent in connection with Minnesota offense); *Escobedo v. Oleisky*, 339 N.W.2d 263, 263 (Minn. 1983) (giving credit for time spent in juvenile detention in connection with offense); *State v. Lindsey*, 314 N.W.2d 823, 825 (Minn. 1982) (concluding that defendant could be entitled to jail credit, depending on factual finding to be made by the Commissioner of Corrections).

Beginning in the mid-1980s, we took notice of the legislatively imposed sentencing guidelines that shifted Minnesota from indeterminate sentencing to a determinate system and recognized that a separate ground for authorizing jail credit existed: preventing de facto sentencing departures by the conversion of concurrent sentences into consecutive sentences. *State v. Dulski*, 363 N.W.2d 307, 309–10 (Minn. 1985); *State v. Patricelli*, 357 N.W.2d 89, 94 (Minn. 1984). In *Dulski*, we identified the concern about the conversion of concurrent sentences into consecutive sentences as a "more important[]" consideration for jail credit than the "in connection with" standard set forth in Rule 27.03, subd. 4(B). 363 N.W.2d at 309.

We further noted that allowing such a de facto departure departs from the value of proportionate sentencing underlying the sentencing guidelines:

> In any event, since the Carlton County sentence must be presumed to be a concurrent sentence, defendant was entitled to receive the credit he sought against both the Carlton County sentence and the Ramsey County sentence. Any other result would mean that the length of time served on the sentence for the first offense would turn on when the sentence is executed, something which is subject to manipulation and to irrelevant factors such as whether the defendant pleads guilty or insists on his right to a trial and whether he has to be transported from one county to another for the revocation proceeding.

Id. at 310; *see* Minn. Sent. Guidelines § 1.A ("The purpose of the Sentencing Guidelines is to establish rational and consistent sentencing standards that promote public safety, reduce sentencing disparity, and ensure that the sanctions imposed for felony convictions are proportional to the severity of the conviction offense and the offender's criminal history.").

By 1990, we acknowledged this shift in analysis explicitly:

> We have re-addressed the issue of credit in a series of cases since the adoption of the Sentencing Guidelines. At first we focused on whether the time in jail was served "in connection with" the offense of conviction against which credit was sought. *State v. Vaughn*, 361 N.W.2d 54, 59 (Minn. 1985). Later decisions shifted the focus to insuring that denial of that jail credit did not in effect convert a presumptively concurrent sentence into a *de facto* consecutive sentence and that the total length of time the defendant served did not turn on irrelevancies or on things subject to manipulation by the prosecutor.

State v. Goar, 453 N.W.2d 28, 29 (Minn. 1990); *see also State v. Weber*, 470 N.W.2d 112, 114 (Minn. 1991) ("[I]n the years following the adoption of the Sentencing Guidelines this court has rethought the general issue of entitlement to jail credit."). Notably in *Goar*, the defendant was awarded jail credit for an offense that was unrelated to the offense on which he was sentenced. 453 N.W.2d at 29; *see also id.* at 30 (Kelley, J., dissenting).

Later, in *Asfaha v. State*, we held that a defendant is entitled to jail credit for time spent at a treatment facility in which the level of confinement was equivalent to that of a jail. 665 N.W.2d 523, 523–24 (Minn. 2003). We reasoned that "[f]airness and equity require that jail credit be granted . . . so as to not elevate form over substance. . . . Courts should be guided by considerations of fundamental fairness and not labels in dealing with custody credit issues." *Id*. at 527–28 (internal quotation marks omitted) (citation omitted);

see also State v. Johnson, 744 N.W.2d 376, 379 (Minn. 2008) ("The policy behind giving custody credit is to ensure fairness and proportionality in sentencing.").

In short, our jurisprudence has evolved from the mid-1980s such that jail credit is properly awarded if the defendant was in custody "in connection with" the offense being sentenced *or* if failing to award jail credit results in a de facto departure under the sentencing guidelines by converting a concurrent sentence into a consecutive sentence. In fact, this distinction is embedded in the sentencing guidelines rules concerning concurrent/consecutive sentences. A concurrent sentence is presumed in cases when (1) "an offender is convicted of multiple current offenses" or (2) "there is a prior felony sentence that has not expired or been discharged." Minn. Sent. Guidelines 2.F. Moreover, the overarching concern in awarding jail credit is to ensure the proportionality in sentencing that the Legislature intended when it adopted the sentencing guidelines as well as fundamental fairness and equity.

Considering this evolution in our approach to jail credit and the value we now place on proportionality, fundamental fairness, and avoiding de facto upward departures, the dichotomy between the interjurisdictional rule (when the defendant is held in custody in a different jurisdiction on a non-Minnesota crime) and the intrajurisdictional rule (when the defendant is held in custody in Minnesota) is unsupportable. For purposes of jail credit, there is no principled reason to treat a person held in custody on a controlled-substance violation by Red Lake authorities (or by another state for that matter) any differently from a person held in custody by Minnesota authorities for the same offense. *See State v. Garcia*,

683 N.W.2d 294, 301 (Minn. 2004) (extended jurisdiction juvenile provision expressly precluding jail credit for time spent in a juvenile facility violated Equal Protection Clause).

We have not addressed the interjurisdictional rule since 1986.[2] That year, we issued a one-page opinion in *State ex rel. Linehan v. Wood*, 397 N.W.2d 341 (Minn. 1986). Without extended analysis, we held that a defendant who had escaped from a Minnesota prison and was arrested and imprisoned in Michigan should not get credit against the remainder of his initial Minnesota prison sentence for his time in a Michigan prison. *Id.* at 342. We applied the rule articulated in *State v. Willis*, 376 N.W.2d 427 (Minn. 1985), that a defendant is entitled to jail credit in another state for time he is held only "in connection with" a Minnesota offense. *Linehan*, 397 N.W.2d at 342.

The issue of conversion of a concurrent sentence into a consecutive sentence was not squarely raised in either *Willis* or *Linehan*. In *Willis*, the Illinois court acquitted the defendant of the Illinois charge, so there was no sentence to which the subsequent Minnesota sentence could run concurrently. 376 N.W.2d at 429 & n.2.[3] In *Linehan*, we

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[2] During the mid-1980s when we last addressed interjurisdictional jail credit, our analysis of jail credit was in flux even in so-called intrajurisdictional cases. *Compare Dulski*, 363 N.W.2d at 309–10 (decided March 1, 1985 and applying an analysis broader than "in connection with"), *and Patricelli*, 357 N.W.2d at 94 (decided October 26, 1984 and noting for first time that in addition to the "in connection with" test, consideration should also be given to fact that defendant's sentences were concurrent), *with State v. Vaughn*, 361 N.W.2d 54, 59 (Minn. 1985) (decided January 25, 1985 and applying a strict "in connection with" analysis).

[3] In *Willis*, we expressly acknowledged in footnote 2 that the concurrent/consecutive sentencing issue was not at issue. 376 N.W.2d at 429 n.2. We distinguished *Dulski* and *Patricelli* on the ground that the cases involved both (1) a jail credit against concurrent sentences and (2) the State's participation as a party to both of the relevant criminal charges. *Id.* We then noted that neither of those factors were in play in *Willis*. *Id.* Rather,

conducted no analysis of the concurrent/consecutive rationale and, in fact, Linehan was not entitled to a presumptive concurrent sentence for his preexisting Minnesota crime. *See* Minn. Sent. Guidelines II.F (1985); Minn. Sent. Guidelines II.F (1980).

In addition, since 1978, we have recognized that a state sentence imposed for an offense subsequent to a federal sentence should run concurrent to that federal sentence. *State v. Wakefield*, 263 N.W.2d 76, 77–78 (Minn. 1978). Indeed, a presumption that Minnesota sentences run concurrently has been the law in Minnesota since the adoption of the modern criminal code in 1963. That year, Minnesota enacted Minn. Stat. § 609.15, which in subdivision 1 reversed the presumption that sentences should run consecutively. Act of May 17, 1963, ch. 753, art. I, 1963 Minn. Laws 1185, 1196; Advisory Comm. on Revision of the Criminal Law, *Proposed Minnesota Criminal Code* 54 (1962). And in *Wakefield*, we expanded the rule to sentences of imprisonment served in jurisdictions outside of Minnesota. 263 N.W.2d at 77–78.

The practical import of *Wakefield* is that Minnesota courts should give jail credit for time spent in non-Minnesota custody on non-Minnesota offenses where the second sentence is to run concurrent to the first. Notably, *Wakefield* involved a crime committed before the adoption of Minn. R. Crim. P. 27.03, subd. 4(B), and so we did not consider the "in connection with" test that we applied in our later interjurisdictional cases. *Linehan*, 397 N.W.2d at 342; *Willis*, 376 N.W.2d at 428–29; *State v. Mattson*, 376 N.W.2d 413,

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we emphasized the "in connection with" test: "In the instant case, however, the defendant was held on criminal charges issued in one state and hold was placed upon him for *unrelated charges* issued out of another state." *Id.* (emphasis added).

415–16 (Minn. 1985) (awarding credit for time spent in Wisconsin jail on hold for Minnesota offense); *Brown*, 348 N.W.2d at 747–48 (remanding to award credit for time spent in Illinois jail awaiting extradition on Minnesota charge when district court found that the Illinois time was in connection with the Minnesota charge); *State v. Bentley*, 329 N.W.2d 39, 40 (Minn. 1983) (declining to award credit under Minn. R. Crim. P. 27.03, subd. 4(B), for time spent in North Dakota jail for North Dakota offense). *Wakefield* remains good law in this state. In fact, awarding jail credit for time spent in custody in another jurisdiction on an unrelated, non-Minnesota offense when the second sentence is to run concurrent with the first is more consistent with our longstanding precedent than a rule that treats defendants held in custody outside of Minnesota on unrelated charges differently than defendants held in Minnesota custody on unrelated charges.

All that said, the validity of the interjurisdictional/intrajurisdictional dichotomy in jail credit jurisprudence and the issue of whether proportionality, fundamental fairness, and avoiding de facto upward departures should be considered when a defendant is held in custody in another jurisdiction on an unrelated offense is not properly presented here. In fact, the court agrees that the question of a de facto upward departure is not before us. *Supra* at 8 ("[I]t is unclear what the district court could have made Roy's Minnesota sentence concurrent or consecutive *to*."). The record does not include any information about the Red Lake conviction or sentence. Under those circumstances, I agree that we cannot and should not reach the question of whether failing to give Roy jail credit for the time spent in Red Lake custody is a de facto conversion of a concurrent sentence to a consecutive sentence.

Because the only issue properly before us is whether Roy was in Red Lake custody "in connection with" the 2011 third-degree possession offense and because I agree with the court that Roy was not in Red Lake custody "in connection with" the 2011 offense, I concur.