

DA 17-0270

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 130N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JACKSON DAVID PALMER,

Defendant and Appellant.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Missoula, Cause No. DC-11-208-IN
Honorable Robert L. Deschamps, III, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Scott A. Everard, Attorney at Law, Missoula, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Micheal S. Wellenstein,
Assistant Attorney General, Helena, Montana

Kirsten H. Pabst, Missoula County Attorney, Mac Bloom, Deputy County
Attorney, Missoula, Montana

Submitted on Briefs: April 18, 2018

Decided: May 29, 2018

Filed:



Clerk

Justice James Jeremiah Shea 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 Jackson David Palmer appeals the Fourth Judicial District Court Judgment and subsequent ruling that allowed 419 days for credit for time served ("CTS") based on the State's calculation, rather than his 1039-day calculation. We restate the dispositive issue on appeal as whether the District Court allowed Palmer credit for all time served to which he is entitled. We affirm.

¶3 We review a criminal sentence for legality and whether the sentence falls within the statutory parameters. *State v. Harrison*, 2016 MT 271, ¶ 5, 385 Mont. 227, 383 P.3d 202. A district court's statutory interpretation is a question of law that we review de novo. *Harrison*, ¶ 5.

¶4 On October 25, 2011, the District Court sentenced Palmer to a three-year deferred sentence for criminal distribution of dangerous drugs in DC-11-208, to run consecutive to his Youth Court sentence in DJ-06-113. On May 15, 2014, Palmer discharged his DJ-06-113 Youth Court sentence and began serving his consecutive three-year deferred sentence for DC-11-208. On October 6, 2016, the District Court held a hearing on the State's Petitions to Revoke Palmer's probation and determined Palmer violated conditions

of his deferred sentence. On November 10, 2016, the District Court held a revocation hearing during which it sentenced Palmer to ten years at Department of Corrections (“DOC”) with five years suspended. On December 8, 2016, the District Court issued its written Judgment that applied the State’s 419-day calculation for CTS and explained that Palmer’s CTS calculation of 1,133 days¹ erroneously included time from his DJ-06-113 Youth Court sentence.

¶5 On March 1, 2017, Palmer, pro se, moved to amend the written Judgment to conform to the sentencing pronouncement. On March 8, 2017, the District Court issued its order on Palmer’s motion for written judgment modification (“Order”), stated the written Judgment conformed with the oral pronouncement, and discussed why the State’s CTS calculation applied. However, the District Court also set a hearing for March 22, 2017, to allow Palmer the opportunity to present his argument. At the hearing, Palmer told the District Court he had not received the Order or notice of the hearing until that morning; however, Palmer did not object or otherwise state he was unprepared to argue why the Judgment did not conform to the oral pronouncement.

¶6 Palmer argued that because the District Court’s stated “I will, in addition, give you credit for any time that you may have incurred since that judgment was pronounced on November 4th, 2011,” the District Court’s use of the words “any time” entitled him to 1,039 days of CTS, since that was the amount of time incurred since judgment was

¹ The record and briefing reflects discrepancies in Palmer’s CTS calculation. According to the District Court Order, Palmer’s trial counsel claimed 1,133 days; however, Palmer’s motion for written judgment modification claimed 1039 days, and, at the hearing, Palmer also claimed 1004 days.

pronounced. The District Court clarified its position by reading beyond the “any time” statement and explained that Palmer was only entitled to credit for jail time connected to the DC-11-208 sentence. The State explained the jail time served before May 15, 2014, was related to his Youth Court sentence in DJ-06-113, and unrelated to Palmer’s DC-11-208 sentence. The State also acknowledged that its 419-day calculation mistakenly included twenty-five days not directly related to Palmer’s offense in this case but did not ask the District Court to amend its calculation to subtract the twenty-five days. Ultimately, the District Court agreed with the State and remanded Palmer to DOC with the 419 days CTS, as provided in the Judgment.

¶7 “A person incarcerated on a bailable offense against whom a judgment of imprisonment is rendered must be allowed credit for each day of incarceration prior to or after conviction, except that the time allowed as a credit may not exceed the term of the prison sentence rendered.” Section 46-18-403(1), MCA. Also, “[i]f a defendant has served any portion of the defendant’s sentence under a commitment based upon a judgment that is . . . modified during the term of imprisonment, the time served must be credited against any subsequent sentence received upon a new commitment for the same criminal act or acts.” Section 46-18-402, MCA. Thus, a defendant only receives credit for the time incarcerated when the incarceration was directly related to the offense for which the sentence is imposed. *State v. Henderson*, 2008 MT 230, ¶ 9, 344 Mont. 371, 188 P.3d 1011. “If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time, consult the records and recollection of the probation and parole officer, and allow all of the elapsed time served without any record or recollection of violations as a credit

against the sentence.” Section 46-18-203(7)(b), MCA. “Nothing in § 46-18-203(7)(b) entitles a defendant to additional credit against a revoked sentence for time served relating solely to a separate offense for which the defendant received a consecutive sentence credited with the same period of time served.” *State v. Damon*, 2007 MT 276, ¶ 14, 339 Mont. 413, 170 P.3d 490.

¶8 On appeal, Palmer maintains the District Court pronounced it would allow credit for “any” time served, and the District Court’s written Judgment does not conform to its oral pronouncement. *See* § 46-18-116, MCA; *State v. Goff*, 2011 MT 6, ¶¶ 30–31, 359 Mont. 107, 247 P.3d 715. Palmer also argues the District Court failed to provide procedural due process notice for the hearing, and it denied him a reasonable opportunity to argue his CTS calculation. Palmer also contends the District Court’s Order violates M. R. Civ. P. 58, which requires separate documents. The State counters that Palmer failed to demonstrate he is entitled to the additional CTS or show that time was connected or directly related to the offense in this case. We agree.

¶9 The District Court’s correct statutory interpretations allowed credit for all the time to which Palmer was entitled on his revoked sentence for DC-11-208. Moreover, although the District Court initially stated that Palmer would get credit for any time incurred since judgment was pronounced, it clarified that the time served had to be connected to this offense. Thus, the District Court’s written Judgment conformed with its oral pronouncement. Regarding Palmer’s due process claim, out of an abundance of caution the District Court set the hearing because § 46-18-116(2), MCA, requires the court to “modify the written judgment to conform to the oral pronouncement at a hearing”

Because the District Court had already determined the written Judgment conformed with the oral pronouncement, it was not statutorily required to hold the hearing and by doing so provided Palmer with more procedural due process than he was due. Nevertheless, the District Court granted Palmer a hearing and, although he contended he had only received notice of the hearing that morning, he did not lodge an objection to proceeding with the hearing as scheduled. Thus, assuming he had a procedural due process claim, it would be waived anyway. Finally, regarding Palmer's contention that the District Court's Order violated M. R. Civ. P. 58, the Montana Rules of Civil Procedure do not apply to criminal proceedings.

¶10 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. The District Court's interpretation and application of the law were correct. We affirm.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ MIKE McGRATH
/S/ LAURIE McKINNON
/S/ DIRK M. SANDEFUR
/S/ INGRID GUSTAFSON