

DA 17-0497

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 252

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

CORY SCOTT PARKS,

Defendant and Appellant.

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APPEAL FROM: District Court of the Third Judicial District,  
In and For the County of Anaconda-Deer Lodge, Cause No. DC-16-79  
Honorable Ray J. Dayton, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Deborah S. Smith, Assistant Appellate  
Defender, Helena, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Brad Fjeldheim, Assistant  
Attorney General, Helena, Montana

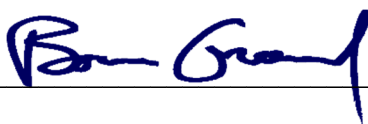
Ben H. Krakowka, Deer Lodge County Attorney, Anaconda, Montana

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Submitted on Briefs: July 17, 2019

Decided: October 22, 2019

Filed:

  
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Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Defendant Cory Scott Parks appeals the June 21, 2017 Sentence of the Third Judicial District Court, Anaconda-Deer Lodge County, crediting him with sixty-one days of time served.

¶2 We review the following issue on appeal:

*Whether Parks was improperly denied credit for time served.*

### **PROCEDURAL AND FACTUAL BACKGROUND<sup>1</sup>**

¶3 On September 16, 2016, Parks was arrested in Deer Lodge County and later charged with Criminal Possession of Dangerous Drugs, a felony, in violation of § 45-9-102, MCA, and several misdemeanor charges. On November 16, 2016, Parks pled guilty to possession of dangerous drugs in Deer Lodge County, and the State dropped the misdemeanor charges pursuant to a plea agreement. After accepting his plea, the District Court released Parks on his own recognizance, subject to conditions. Parks served a total of sixty-one days (September 16, 2016 – November 16, 2016) in Deer Lodge County custody prior to his release.

¶4 On February 27, 2017, the Deer Lodge County Attorney filed a Verified Petition to Revoke Order of Release after Parks failed to appear for his presentence investigation interview. On February 28, 2017, the District Court revoked Parks' release, issued a bench warrant for his arrest, and set bail at \$50,000. On March 4, 2017, Parks was arrested for

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<sup>1</sup> Certain relevant portions of the procedural and factual background have been taken from the Second Judicial District Court, Butte-Silver Bow County, and Silver Bow County Justice Court records, of which we have taken judicial notice pursuant to M. R. Evid. 202(b)(6).

possession of dangerous drugs in Cascade County. That same day, Parks was served with the Deer Lodge County warrant. On March 8, 2017, Parks was charged with forgery in Silver Bow County Justice Court. On that same day, the Silver Bow County Justice Court filed an arrest warrant, set bail at \$5,500, and served the warrant on Parks while he was detained in Cascade County. On May 30, 2017, the Cascade County District Court sentenced Parks on the possession of dangerous drugs charge and ordered his release. Parks was then transferred to the Silver Bow County Detention Center.

¶5 Parks’ Deer Lodge County sentencing hearing began on May 24, 2017 and was continued to June 21, 2017. At the hearing, Parks requested an additional 105 days credit for time served from March 4, 2017—when he was arrested in Cascade County and the Deer Lodge County bench warrant was served on him—through the day of his sentencing on June 21, 2017.<sup>2</sup> When pressed by the District Court, neither party could produce documents from the Cascade County case establishing how much time, if any, Parks was credited when he entered his plea on the Cascade County charge. Also, Parks’ counsel mistakenly informed the District Court that Parks had entered a plea on the Silver Bow County forgery charge when, in fact, that charge was still pending.

¶6 The District Court imposed a five-year commitment to the Department of Corrections (DOC) with two years suspended on the possession of dangerous drugs charge. The District Court gave Parks credit for the sixty-one days he was detained in the Deer

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<sup>2</sup> The 105-days credit that Parks requested was in addition to credit for the sixty-one days Parks had already served in Deer Lodge County from September 16, 2016 – November 16, 2016. That time is not in dispute.

Lodge County jail and denied his request for additional credit for time served while he was incarcerated in Cascade County and Silver Bow County. The District Court reasoned that the Cascade County custody was directly related to his possession of dangerous drugs charge in Cascade County and the Silver Bow County custody was directly related to the forgery charge. On appeal, Parks does not dispute that he is not entitled to credit for time served while in Cascade County custody. The sole issue before us is whether Parks should have been credited with twenty-two days served in Silver Bow County custody.

### STANDARDS OF REVIEW

¶7 We review a criminal sentence of at least one year of actual incarceration for legality only. *City of Bozeman v. Cantu*, 2013 MT 40, ¶ 11, 369 Mont. 81, 296 P.3d 461; *State v. Claassen*, 2012 MT 313, ¶ 14, 367 Mont. 478, 291 P.3d 1176. The sentence is legal if it falls within the parameters set by applicable sentencing statutes and if the sentencing court adheres to the affirmative mandates of the applicable sentencing statutes. *State v. Ariegwe*, 2007 MT 204, ¶ 174, 338 Mont. 442, 167 P.3d 815. A determination of legality is a question of law that we review de novo. *State v. Seals*, 2007 MT 71, ¶ 7, 336 Mont. 416, 156 P.3d 15.

### DISCUSSION

¶8 *Whether the District Court erred by failing to credit Parks for time served.*

¶9 Montana law regarding credit for time served states in relevant part:

(1) 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, MCA. Calculating credit for time served “is not a discretionary act, but a legal mandate.” *State v. Hornstein*, 2010 MT 75, ¶ 12, 356 Mont. 14, 229 P.3d 1206 (citing *State v. Hoots*, 2005 MT 346, ¶ 31, 330 Mont. 144, 127 P.3d 369). A district court may not decide to withhold credit in anticipation that credit may be given in a subsequent sentencing. *See Hornstein*, ¶ 16 (holding that the district court erred in denying the defendant credit for time served when the court reasoned the time may be credited to the defendant’s parole by the Pardons and Parole Board). Once a judgment of imprisonment has been entered for a bailable offense, a person is entitled to credit for each day of incarceration prior to and after the conviction. *See State v. McDowell*, 2011 MT 75, ¶ 27, 360 Mont. 83, 253 P.3d 812; *Hornstein*, ¶¶ 12-13; § 46-18-403(1), MCA. Each day of incarceration must be credited to a defendant’s sentence “only if that incarceration was directly related to the offense for which the sentence [was] imposed.” *State v. Kime*, 2002 MT 38, ¶ 16, 308 Mont. 341, 43 P.3d 290, *overruled in part on other grounds by State v. Herman*, 2008 MT 187, ¶ 12, 343 Mont. 494, 188 P.3d 978.

¶10 The purpose of § 46-18-403, MCA, is:

[T]o eliminate the disparity of treatment between indigent and nonindigent defendants . . . credit for time served is given so as not to penalize indigent defendants who are unable to post bail and must remain in custody until they are sentenced when nonindigents may secure their release and remain free during that time period.

*Kime*, ¶ 15. Criminal defendants who are in custody and cannot afford bail are treated equally to criminal defendants who can afford bail and are released by granting presentence credit. *See Hornstein*, ¶ 13 (citing *Kime*, ¶ 15); *State v. Price*, 2002 MT 150, ¶ 27, 310 Mont. 320, 50 P.3d 530. A person who posts bail and is released is not incarcerated

and will not receive credit for time served. *State v. Gulbranson*, 2003 MT 139, ¶¶ 12-13, 316 Mont. 163, 69 P.3d 1187, *overruled in part on other grounds by Herman*, ¶ 12. The purpose of § 46-18-403, MCA, is not served when a person is given credit for time served for offenses unrelated to the incarceration. *Kime*, ¶ 16 (finding that the defendant was only entitled to credit for the time spent in jail between his arrest and transfer to the Montana State Prison reasoning his subsequent incarceration at the Montana State Prison related to a prior felony conviction).

¶11 Presentence time should only be credited “once against the aggregate of all terms imposed when multiple sentences are imposed consecutively.” *Price*, ¶ 28 (holding that a defendant’s time served would be applied once to the aggregate of the terms of his sentence rather than to each individual term of his sentence). Granting double credit does not serve the intended purpose of § 46-18-403, MCA. *Price*, ¶ 27. However, a defendant may be entitled to receive credit for a single period of presentence incarceration on separate bailable offenses under § 46-18-403, MCA. *See State v. Pavey*, 2010 MT 104, ¶ 25, 356 Mont. 248, 231 P.3d 1104; *State v. Erickson*, 2005 MT 276, ¶¶ 22-24, 329 Mont. 192, 124 P.3d 119 (concluding that if the defendant’s bond had been formally revoked, then he would have been incarcerated on two unrelated charges simultaneously and entitled to receive credit for time served on each charge).

¶12 In this case, the District Court denied Parks credit for the time served in Silver Bow County because it determined that the twenty-two days Parks was held in Silver Bow County was directly related to the Silver Bow County forgery charge. While this is true, Parks was also being held on the Deer Lodge County warrant. Both the Silver Bow County

charge and the Deer Lodge County charge were bailable offenses, with bail set at \$5,500 on the Silver Bow County charge and \$50,000 on the Deer Lodge County charge.

¶13 The sentencing court must determine for what charge the defendant was being detained and if the charge is bailable. *See Hornstein*, ¶ 17; *Kime*, ¶¶ 13, 16. In the present case, the District Court attempted to ascertain the circumstances of Parks' Silver Bow County custody in order to properly credit him with the time served that he was due. However, neither party presented clear evidence to the District Court on what charges Parks was being held on while in Silver Bow County. Having determined from the Silver Bow County records that Parks was held on both the Deer Lodge County and Silver Bow County charges, and that both were bailable offenses, we conclude that Parks was entitled to credit for the twenty-two days he served in Silver Bow County. Even if Parks posted the \$5,500 bail in the Silver Bow Justice Court case, he still would have been detained pursuant to the bench warrant from the Deer Lodge County District Court unless he could have posted the \$50,000 bail. *See Hornstein*, ¶ 17; *Kime*, ¶ 16. Thus, Parks is entitled to twenty-two days credit for time served. *See Pavey*, ¶ 25; *Erickson*, ¶¶ 22-24.

### CONCLUSION

¶14 Parks was entitled to receive credit for the twenty-two days he spent in custody in Silver Bow County. We remand for entry of an amended judgment consistent with this Opinion.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ MIKE McGRATH

/S/ BETH BAKER

/S/ LAURIE McKINNON

/S/ DIRK M. SANDEFUR