DA 20-0494

IN THE SUPREME COURT OF THE STATE OF MONTANA

2022 MT 228

STATE OF MONTANA,

Plaintiff and Appellee,

v.

DAVID ALAN SPAGNOLO,

Defendant and Appellant.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. CDC 19-436
Honorable Jon A. Oldenburg, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Shannon Sweeney, Attorney at Law, Palmer, Puerto Rico

For Appellee:

Austin Knudsen, Montana Attorney General, Bree Gee, Assistant Attorney General, Helena, Montana

Joshua A. Racki, Cascade County Attorney, Amanda Lofink, Deputy County Attorney, Great Falls, Montana

Submitted on Briefs: October 12, 2022

Decided: November 15, 2022

Filed:

Clerk

Justice Beth Baker delivered the Opinion of the Court.

¶1 David Alan Spagnolo challenges the Eighth Judicial District Court's sentence on his convictions for Escape and Assault on a Peace Officer. Spagnolo argues that the court failed to properly credit the time he served in jail prior to sentencing after he was committed to the Montana Department of Corrections on another offense. In addition, Spagnolo argues, and the State concedes, that the court improperly imposed supervisory conditions on his unsuspended sentence to the DOC. We reverse and remand for entry of an amended judgment.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 In June 2019, the Cascade County Adult Treatment Court found that Spagnolo violated its conditions for supervised release on a DUI offense; consequently, Spagnolo was arrested on a probation and parole warrant. Spagnolo posted bond the next day and was released. At his initial appearance on the violations, Spagnolo tried to flee the courtroom. During the attempted escape, one of the law enforcement officers attempting to apprehend Spagnolo injured her thumb. Spagnolo immediately was arrested and held in custody for prosecution. Spagnolo bonded out of custody. After he failed to appear for arraignment, the District Court issued a warrant for Spagnolo's arrest. On July 13, 2019, Spagnolo was arrested on the issued warrant. He then remained in custody through sentencing. Spagnolo entered no-contest pleas to Escape, in violation of § 45-7-306, MCA, and to Assault on a Peace Officer, in violation of § 45-5-210(1)(a), MCA. For these offenses, the District Court imposed two five-year sentences to the DOC. The court

ordered the two sentences to run consecutively to each other and concurrently with Spagnolo's prior sentences. In its sentencing order, the District Court imposed numerous conditions of supervision.

¶3 From the date of Spagnolo's foiled escape to his sentencing, he was incarcerated for 396 days. On August 23, 2019, during the intervening period, Spagnolo was committed to the DOC for a prior DUI offense based on violating his Treatment Court conditions. The District Court, acting on the recommendation of the Pre-Sentence Investigation (PSI), credited time served for only 56 days. The court reasoned that because Spagnolo "became a DOC Commit on August 23, 2019 . . . and [was] ineligible to post bond," the days he spent incarcerated after that date could not be credited as time served toward his present sentence.[1] The PSI noted that "[i]f he were given credit for all time, regardless of status, the total would be 396 days." Spagnolo now appeals the legality of this sentence.

STANDARD OF REVIEW

¶4 "We review a district court's sentence for legality." *State v. Mendoza*, 2021 MT 197, ¶ 8, 405 Mont. 154, 492 P.3d 509 (citing *State v. Parks*, 2019 MT 252, ¶ 7, 397 Mont. 408, 450 P.3d 889). When a sentence fits within the parameters of applicable sentencing statutes and the sentencing court adheres to affirmative statutory mandates

[1] At the time of the revocation disposition in his DUI matter, Spagnolo also was being held on the escape charge, for which bond had been set and not posted. The bond related to the escape charge precluded Spagnolo's release by the DOC into any community program the DOC may have determined to be appropriate for his rehabilitation. The State was free at the time to request that the bond related to the escape charge be quashed and Spagnolo released on his own recognizance related to that charge. If the bond was quashed, Spagnolo would have had the opportunity for placement by DOC into community-based programming.

when imposing it, a sentence is legal. *Parks*, ¶ 7. Because it is a question of law, we consider the legality of a sentence de novo. *Parks*, ¶ 7.

¶5 The law affords a sentencing court no discretion to grant credit for time served. *State v. Tippets*, 2022 MT 81, ¶ 10, 408 Mont. 249, 509 P.3d 1 (citations omitted). We therefore review a district court's calculations crediting time served for legality under a de novo standard. *State v. Pennington*, 2022 MT 180, ¶ 18, 410 Mont. 104, 517 P.3d 894.

DISCUSSION

¶6 *1. Did the District Court err when it did not consider the entirety of Spagnolo's pre-trial incarceration as credit for time served?*

¶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 . . . ." Section 46-18-403(1), MCA. This Court has recognized the confusion regarding the applicability of this statute created by the phrase "a bailable offense." *Killam v. Salmonsen*, 2021 MT 196, ¶¶ 15-16, 405 Mont. 143, 492 P.3d 512. We held just last year that the Legislature resolved any such confusion when it enacted § 46-18-201(9), MCA, in 2017: when a sentencing court imposes a sentence "that includes incarceration in a detention facility or the state prison . . . the court shall provide credit for time served by the offender before trial or sentencing." Section 46-18-201(9), MCA, eliminated the need for sentencing courts to determine what constitutes "a bailable offense." *Killam*, ¶¶ 16-17; *see also Mendoza*, ¶ 10. We discussed in *Killam* what pre-sentence incarceration must be credited when a court imposes sentence. *Killam*, ¶¶ 17-18.

We considered § 46-18-201(9), MCA, and decided that the statute requires sentencing courts to give offenders credit for time served prior to their sentencing regardless of what constitutes "a bailable offense" because the statute is unqualified. *Killam*, ¶ 17.

¶8 "[O]nce the Court has placed a construction on statutory language, the Court prefers to 'leav[e] it to the Legislature to amend the law should a change be deemed necessary.'" *ALPS Prop. & Cas. Ins. Co. v. McLean & McLean, PLLP*, 2018 MT 190, ¶ 47, 392 Mont. 236, 425 P.3d 651 (quoting *Estate of Woody v. Big Horn Cty.*, 2016 MT 180, ¶ 20, 384 Mont. 185, 376 P.3d 127 (brackets in original embedded quotation) (citation omitted)). When this Court is faced with more than one viable interpretation of a statute, it is preferable to adhere to principles of stare decisis because reliance on precedent "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decision, and contributes to the actual and perceived integrity of the judicial process." *State v. Kirkbride*, 2008 MT 178, ¶ 13, 343 Mont. 409, 185 P.3d 340 (quoting *Payne v. Tennessee*, 501 U.S. 808, 827, 111 S. Ct. 2597, 2609 (1991)). Unless it appears that our interpretation is manifestly wrong, we will not overrule precedent regarding the construction of statutory language. *State ex rel. Perry v. Dist. Court*, 145 Mont. 287, 310, 400 P.2d 648, 660 (1965). If the Legislature disagrees with our interpretation of a statute, it is free in the exercise of its constitutional prerogative "to override our interpretation and effect the proper legislative intent." *State v. Wolf*, 2020 MT 24, ¶ 23, 398 Mont. 403, 457 P.3d 218 (citations omitted).

¶9 Except for the few days that he was released on bond, Spagnolo was incarcerated on the present offenses from June 26, 2019, through his sentencing on August 11, 2020, after § 46-18-201(9), MCA, took effect but before we decided *Killam*. On August 23, 2019, Spagnolo was committed to the DOC on a separate offense from the two counts at issue. The PSI calculated credit for time served from June 26, 2019, to his commitment on August 23, 2019. Spagnolo argues that the District Court erred by not also counting the time he spent incarcerated between August 23, 2019, and August 11, 2020, on the unrelated sentence. Spagnolo cites *Killam* and *Mendoza* to support his argument that the District Court must credit each day of his incarceration from the date of arrest to the date of sentencing without excluding time spent incarcerated for other offenses. *See Killam*, ¶ 19; *Mendoza*, ¶ 12. *Killam* made clear that time spent incarcerated pre-trial and pre-sentencing must be calculated towards an offender's sentence as credit for time served. *Killam*, ¶ 19. This is true even if the defendant is also being held on another matter. *Killam*, ¶ 17.

¶10 The State argues that the District Court imposed a legal sentence when it credited Spagnolo with 56 days based on the plain language of §§ 46-18-201(9) and -403(1), MCA. The State requests that we overturn *Killam* and our companion decision in *Mendoza* that relied on it.

¶11 The State asserts an interpretation of §§ 46-18-201(9) and -403(1), MCA, that we rejected in *Killam*. It argues that, in *Killam*, we applied § 46-18-201(9), MCA, to the "exclusion and derogation" of § 46-18-403(1), MCA. The State maintains that our statutory analysis in *Killam* inaccurately conflicts with the plain language of

§ 46-18-201(9), MCA. The State's arguments, however, are not new. They essentially are the same as those duly considered and rejected in *Killam*.

¶12 The State also argues that the District Court properly adhered to the affirmative statutory mandates to consider time served when it calculated 56 days—the incarceration directly related to the charges for which Spagnolo has been herein sentenced. Based on this argument, the State contends that the District Court did not need to grant Spagnolo credit for time served on a different offense. The State's position on how to calculate credit for time served clearly is at odds with our construction of the statute. *See Killam*, ¶ 19.

¶13 The State also contends that our interpretation of § 46-18-201(9), MCA, directly conflicts with "unquestioned precedent" as to the legislative purposes and objectives in granting credit for time served. It maintains that, for those offenders who cannot afford bail and for "repeat offenders," credit for time served on other offenses is "an unwarranted windfall." The State argues that rather than equalize the "potential disparity between indigent and nonindigent offenders facing prison time, *Killam* exacerbates that unfairness" because an offender otherwise in Spagnolo's position who can make bail would be denied credit for time served under *Killam*.

¶14 Unrelated sentences will merge if a sentencing court orders that one run concurrently with the other. *State v. Youpee*, 2018 MT 102, ¶ 8, 391 Mont. 246, 416 P.3d 1050 (citing *State v. Tracy*, 2005 MT 128, ¶ 27, 327 Mont. 220, 113 P.3d 297 (superseded by statute on other grounds)). It is within the trial court's discretion "to order that sentences for unrelated offenses are to run concurrently, not consecutively . . . ." *Tracy*,

¶ 27 (superseded by statutes on other grounds); *see Killam*, ¶ 18 ("The court continues to have discretion to impose sentences to run concurrently or consecutively and to determine the appropriate length of sentence within the statutory parameters of the offense for which the defendant is being sentenced."). To reach its "windfall" conclusion, the State overlooks the effect of imposing consecutive or concurrent sentences. The District Court ordered Spagnolo's two sentences at issue to run concurrently with his prior sentences. Therefore, Spagnolo's present sentence merged with his prior sentence. *See Youpee*, ¶ 8. The State is wrong to assume a "windfall" is created by our interpretation of these statutes when district courts have the discretionary authority to run sentences consecutively to those imposed for prior offenses. If a court wishes to avoid the prospect of such a "windfall," it may choose to order the sentence to run consecutively to the offender's prior sentence. The sentences will not merge, and the State's concerns will be avoided.

¶15 We observed in *Killam*, ¶ 18:

> Section 46-18-201(9), MCA, is consistent with legislative sentencing policy which provides courts discretion to determine length of sentence and whether sentences should be imposed concurrently or consecutively while simplifying the sentencing court's determination of the credit for time served, requiring it to only refer to the record of the case for which it is imposing sentence to determine the time which must be credited against the defendant's sentence.

Based on principles of stare decisis, we reaffirm our holding in *Killam*. Our precedent demands that the District Court count the entirety of Spagnolo's incarceration prior to his sentencing for the counts at issue. The District Court erred by granting Spagnolo only 56

days' credit for time served. Spagnolo was entitled to full credit for time served in the amount of 396 days.

¶16 *2. Did the District Court err when it imposed supervisory conditions on Spagnolo's sentence when it was ordered entirely unsuspended?*

¶17 Absent explicit statutory authority stating otherwise, sentencing courts do not have the authority to impose conditions of parole. *State v. Burch*, 2008 MT 118, ¶ 26, 342 Mont. 499, 182 P.3d 66. This authority instead rests with the Board of Pardons and Parole. *State v. Heafner*, 2010 MT 87, ¶ 5, 356 Mont. 128, 231 P.3d 1087.

¶18 The District Court sentenced Spagnolo to two consecutive five-year terms of incarceration. In its Judgment and Sentence, the District Court "impose[d]" a number of conditions on Spagnolo should he be released from the DOC. Spagnolo argues that the District Court erred by imposing supervisory conditions when no part of his sentence was suspended. Spagnolo appeals Conditions 1-11 and 16-25, arguing that the court acted outside its statutory authority by imposing supervisory conditions on his future parole. Spagnolo does not challenge Conditions 12-15. The State concedes this error and suggests that the District Court be instructed to change the imposition of supervisory conditions to a "recommendation."

¶19 We agree with the parties' respective arguments. We have stated that "[c]orrecting invalid sentence provisions when it is possible to do so protects the integrity of the judicial process and furthers the express correctional and sentencing policy of the state." *Heafner*, ¶ 12 (citing § 46-18-101, MCA).

¶20 Accordingly, we reverse Spagnolo's sentence and remand with instructions to the District Court to strike the conditions currently stated as Conditions 1-11 and Conditions 16-25. In its amended judgment, the District Court may restate these conditions as recommendations for future parole consideration. *See Heafner*, ¶ 6.

CONCLUSION

¶21 We reverse and remand to the District Court to amend its judgment in accordance with this Opinion.

/S/ BETH BAKER

We Concur:

/S/ MIKE McGRATH
/S/ LAURIE McKINNON
/S/ DIRK M. SANDEFUR
/S/ JIM RICE