

DA 21-0234

IN THE SUPREME COURT OF THE STATE OF MONTANA

2022 MT 255N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JAMESON THOMAS WOODS,

Defendant and Appellant.

APPEAL FROM: District Court of the Sixth Judicial District,
In and For the County of Park, Cause No. DC 2017-12
Honorable Brenda R. Gilbert, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Colin M. Stephens, Stephens Brooke , P.C., Missoula, Montana

For Appellee:

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

Kendra K. Lassiter, Park County Attorney, Livingston, Montana

Submitted on Briefs: December 7, 2022

Decided: December 27, 2022

Filed:



Clerk

Chief Justice Mike McGrath 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 Jameson Thomas Woods (Woods) appeals from the Findings of Fact and Conclusions of Law issued by the Sixth Judicial District Court on March 17, 2021, revoking his deferred sentence, imposing the dispositional sentence recommended by the parties, and granting 67 days credit for time served. We affirm.

¶3 On December 5, 2019, Woods entered into a plea agreement with the State and, at a hearing before the District Court, pled guilty to a single count of criminal possession of dangerous drugs. On February 24, 2020, the court imposed a three-year deferred sentence. On February 25, 2020, Woods signed the conditions of his probation.

¶4 On December 18, 2020, the State filed a Petition to Revoke Deferred Sentence (Petition) alleging three non-compliance violations and four compliance violations of the conditions of Woods' deferred sentence.¹ On March 15, 2021, following Woods' admissions to each of the alleged violations in the Petition, the District Court found that Woods had violated the conditions of his deferred sentence and revoked that sentence. The

¹ The non-compliance violations were driving under the influence (2nd offense); failure to carry proof or exhibit insurance in vehicle (3rd offense); and driving while license suspended (2nd offense).

court imposed the parties' stipulated dispositional sentence—that Woods receive a three-year suspended sentence, subject to the conditions set forth in the original sentencing judgment, to run concurrently with a prior 10-year suspended sentence in Gallatin County for criminal endangerment. The court granted Woods credit for 67 days of time served, but it did not grant him any credit for elapsed time. Woods had requested 312 days credit for elapsed time.

¶5 On appeal, Woods appears to raise two claims. He alleges that the District Court illegally revoked his deferred sentence for non-compliance violations and that the court incorrectly denied him credit for elapsed time.

The Legality of the District Court's Revocation of Woods' Deferred Sentence

¶6 The State contends that Woods waived the right to assert this issue on appeal because he did not object in the District Court to its potential statutory violations and because the sentence was not illegal—thereby foreclosing this Court's review of the issue under *Lenihan*. See *State v. Lenihan*, 184 Mont. 338, 343, 602 P.2d 997, 1000 (1979).²

¶7 Woods argues the District Court illegally revoked his deferred sentence. Section 46-18-203(7)(a)(iv), MCA, explicitly allows a judge to require the offender to serve a sentence that might have been originally imposed following the judge finding that the offender committed a non-compliance violation. See *State v. Pennington*, 2022 MT 180, ¶ 20, 410 Mont. 104, 517 P.3d 894. Woods admitted to non-compliance violations and the

² In *Lenihan*, we established that only where a criminal sentence is alleged to be illegal or in excess of statutory mandates will this Court review an issue on appeal that the party failed to object to at trial.

court cited those admissions in revoking his deferred sentence. The revocation was not illegal under § 46-18-203(7)(a)(iv), MCA.

¶8 We held in *State v. Kotwicki*, 2007 MT 17, 335 Mont. 344, 151 P.3d 892, that an argument that the district court failed to follow the statutory procedural mandates for the type of sentence constitutes an “objectionable sentence” but is not reviewable under the *Lenihan* exception.

The Legality of the District Court’s Decision Not to Grant Credit for Elapsed Time

¶9 Calculating credit for time served is not a discretionary act, but a legal mandate. *State v. Tippets*, 2022 MT 81, ¶ 10, 408 Mont. 249, 509 P.3d 1 (citation omitted). As such, a lower court’s determination of credit for time served is reviewed for legality and we exercise de novo review. *Tippets*, ¶ 10 (citation omitted). However, credit for elapsed time (often referred to as street time) is discretionary, but certain procedural requirements are mandated by statute.

¶10 Recently, in *Pennington*, a case also involving revocation of a deferred sentence, we determined that a district court’s denial of elapsed time credit fell short of the requirements of § 46-18-203(7)(b), MCA. *Pennington*, ¶ 29. The sentencing judge “did not provide any explanation for its denial of credit nor point to any specific record or recollection of a violation” during the time period for which the defendant argued he deserved credit. *Pennington*, ¶ 29. We concluded that the defendant was illegally sentenced. *Pennington*, ¶ 29.

¶11 Here, Woods incorrectly characterizes the District Court as “summarily denying credit” for elapsed time. However, the court pointed to specific recollections of violations

in explaining its decision. The court noted that Woods used illegal drugs immediately after he was sentenced and serially failed to comply with other conditions of his deferred sentence. As part of those serial failures, the court listed Woods failing to submit to mandated drug testing and failing to provide proof of employment. The court adhered to the statutory requirements when it denied Woods credit for elapsed time.

¶12 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.

¶13 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ JAMES JEREMIAH SHEA

/S/ BETH BAKER

/S/ INGRID GUSTAFSON

/S/ JIM RICE