

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 11-0315

STATE OF MONTANA,

Plaintiff and Appellee,

v.

O R D E R

THOMAS JAMES EVANS, SR.,

Defendant and Appellant.

On May 29, 2012, we issued an opinion in the above-entitled action affirming the decision of the Eleventh Judicial District Court in all respects, save for the lower court's calculation of credit for time served. We reversed and remanded on that issue, instructing the District Court to award an additional ninety-five days of credit. *State v. Evans*, 2012 MT 115. Appellant Thomas Evans timely petitioned for rehearing, to which the State has responded. Having fully considered the parties' positions, we conclude that rehearing is not warranted under the standards of M. R. App. 20(1)(a). We have, however, determined to make three minor changes to the Court's opinion.

Evans correctly notes the District Court's order states, "On January 25, 2011, [Evans] was released on his Missoula felony offense but he remained lawfully detained on the December 30, 2010 warrant in the instant case." Even if Evans was not released from State custody on January 25, 2011, however, that fact does not alter the outcome in this case. In our decision, we agreed with the State's contention that "the record is insufficient to determine if there was a violation of the statutory procedures, and, in any

event, the subsequent initiation of formal revocation proceedings established the district court's jurisdiction over the revocation of Evans' suspended sentence." *Evans*, ¶ 17. Whether Evans actually remained in custody on January 25, 2011, is immaterial to our holding because the probation officer filed his affidavit in support of revocation on December 20, 2010, and the District Court issued a warrant for Evans' arrest for violations of his suspended sentence on December 30, 2010.

Accordingly,

IT IS ORDERED that Paragraphs 11, 20 and 22 of the Opinion in this matter are AMENDED as follows. Strikeouts are deleted and underlined language is added:

¶ 11 On January 25, 2011, Evans was released on ~~his own recognizance from the~~ Missoula felony offense but remained detained ~~County Detention Facility.~~ ~~On January 28, 2011, he was arrested~~ pursuant to the bench warrant from Flathead County. Evans made his initial appearance in Flathead County on January 28, 2011, ~~that same day~~ and his bond was set at \$50,000. On February 14, 2011, the Missoula County Attorney dismissed the felony assault charge against Evans but retained the misdemeanor PFMA count.

¶ 20 The record does not establish that Evans was held for his probation violation until after he was released ~~from detention~~ on the Missoula County charges. He was then ~~arrested~~ detained pursuant to the Flathead County ~~a bench warrant~~ and transported to ~~in~~ Flathead County on January 28, 2010. By that time, Miller already had filed his report of Evans' violation with the Eleventh Judicial District Court ~~Flathead County~~. Evans was ~~arrested~~ taken into custody in Flathead County pursuant to a bench warrant, in

accordance with § 46-23-1012(1), MCA, and subsection (4) therefore is not applicable. The statute mandated that Evans appear before the court “without unnecessary delay.” *Johnston*, ¶ 25.

¶ 22 Evans additionally argues that the bail on his probation hold, set at \$5,000 more than the bail set on the new charges, constituted a detention necessitating the filing of a report of violation within 10 days of November 18, 2010. We decline to address this contention as there is no evidence in the record that Evans was held exclusively on the revocation charge prior to Miller filing his affidavit, or the District Court issuing a bench warrant. ~~posted bond on the new charges and that his probation hold alone prevented him from leaving the detention facility. In fact, he was released without posting any bond.~~ We conclude the State complied with the requirements of § 46-23-1012, MCA.

IT IS FURTHER ORDERED that the petition for rehearing is DENIED. An amended opinion is issued herewith.

The Clerk of Court is directed to mail a copy of this Order to all counsel of record.

DATED this 26th day of June, 2012.

/S/ MIKE McGRATH
/S/ BETH BAKER
/S/ MICHAEL E WHEAT
/S/ JIM RICE
/S/ JAMES C. NELSON
/S/ PATRICIA COTTER
/S/ BRIAN MORRIS