

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	No. 80889-3-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	UNPUBLISHED OPINION
	)	
TYLER JOHN KIRWAN,	)	
	)	
Appellant.	)	
_____	)	

HAZELRIGG, J. — Tyler J. Kirwan received standard range sentences on one count of possession of a stolen motor vehicle and one count of possession of methamphetamine. At sentencing, Kirwan requested credit for time he spent incarcerated in California subsequent to his release from custody on personal recognizance in Washington on this case. The trial court partially granted his request; allowing credit for a portion of the time served in California, limiting it to the period following his booking on a Washington fugitive warrant that had been issued after his extradition to California. As the court’s decision was consistent with both the statute and signed plea agreement of the parties, Kirwan’s argument has no merit and we affirm on that issue.

While this appeal was pending, Kirwan moved to file a supplemental assignment of error in this court based on State v. Blake.<sup>1</sup> This panel granted the

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<sup>1</sup> No. 96873-0, Slip Op. (Wash. Feb 25, 2021), <https://www.courts.wa.gov/opinions/pdf/968730.pdf>.

motion and the State conceded that count two, possession of methamphetamine, should be vacated and Kirwan should be resentenced on count one. Accordingly, we remand for further proceedings consistent with the State's concessions.

#### FACTS

On April 11, 2017, Tyler Kirwan was charged in King County, Washington with one count of possession of a stolen vehicle and one count of possession of methamphetamine. Kirwan had been booked into jail on April 7, 2017, the date of his arrest. Kirwan was released from custody on those charges on May 16, 2017, however he remained held in the King County Jail until May 24, 2017 when he was extradited to Humboldt County, California to face criminal charges there. Kirwan was incarcerated in California from May 24, 2017 until January 29, 2018. During this span of time he was transported to three separate counties in California to face charges in each jurisdiction.

A warrant issued in this case on June 13, 2017 based on Kirwan's failure to appear for a court hearing while he was still jailed in California. On November 21, 2017, while Kirwan was incarcerated in California, he was booked on the extraditable fugitive warrant from King County. Kirwan resolved his last California charge on January 29, 2018 and waived extradition to Washington to face the King County charges. Kirwan was booked into the King County Jail on February 15, 2018.

Following jury trial, Kirwan was convicted of possession of methamphetamine, but the jury could not reach a unanimous verdict on the possession of stolen motor vehicle charge and a mistrial was declared as to that

count. Kirwan later entered a guilty plea to that charge and was sentenced on the two counts under one judgment and sentence. As part of the plea agreement, which was signed by all parties and filed with the court, the State agreed to request that Kirwan receive “credit for time served by defendant in California jails while on Washington hold during the pendency of this case.”

Pursuant to the plea agreement, the State requested that Kirwan receive credit for time served in California while he was held on the Washington fugitive warrant; the period from November 22, 2017 to February 15, 2018, for a total of 86 days. Kirwan requested credit for the time served in California beginning on June 13, 2017, the date the Washington warrant for Kirwan’s failure to appear in court was issued, but before it had been served. The trial court reviewed RCW 9.94A.505(6) and determined Kirwan was not entitled to credit for the time prior to the service of the Washington warrant when he was solely held in custody on California charges. Kirwan received a standard range sentence of 25 months on the possession of a stolen motor vehicle charge and six months plus one day on the possession of methamphetamine charge, to be served concurrently. The trial court credited him with 89 days<sup>2</sup> against the sentence. Kirwan now appeals.

#### ANALYSIS

Kirwan argues that the trial court erred by failing to grant him full credit for the time he served in California awaiting extradition to Washington. He offers no

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<sup>2</sup> The court credited him with the 86 days he spent in California and three days served in the King County Jail and on a local alternative to confinement, for a total of 89 days.

compelling authority for his position that he is entitled to credit for time prior to the service of a bench warrant and we thereby affirm.

This court reviews questions of law de novo. State v. Swiger, 159 Wn.2d 224, 227, 149 P.3d 372 (2006). An individual has both a constitutional and a statutory guarantee to receive credit for each day of confinement served prior to sentencing. In re Pers. Restraint of Costello, 131 Wn. App. 828, 832, 129 P.3d 827 (2006). However, this guarantee is not without limits:

The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

RCW 9.94A.505(6) (emphasis added). This statute “reflects the constitutional requirement that an offender be credited for each day of confinement served prior to sentencing.” State v. Enriquez-Martinez, 14 Wn. App. 2d 192, 195, 469 P.3d 1186 (2020). This requirement does not mandate “that each day of preconviction detention be credited to the offender” when multiple sentences are at issue. Id. A defendant is not entitled to time spent in custody out-of-state while detained on another state’s charges. Id. at 197–98.

Here, Kirwan’s claim is that he is entitled to time he spent in custody in California before the Washington warrant was even served on him. This claim is without merit and not well taken. The plain meaning of RCW 9.94A.505(6) establishes that a person must be confined on the offense for which credit is sought at sentencing in order to receive credit for that time, yet the record makes clear that Kirwan was not held under authority of the warrant on this case until November 21, 2017. The time to which Kirwan argues he entitled to credit toward this

sentence is time during which he was held solely on California charges after being released on personal recognizance in Washington. The record before us reflects that Kirwan received credit for his time of confinement for the entire period that he was held on the Washington fugitive warrant.

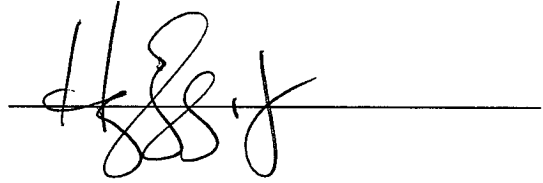
Further, the plea agreement filed with the court at sentencing, signed by Kirwan, his defense counsel and the deputy prosecutor, includes a section entitled "OTHER" which specifically provides: "State will agree to credit for time served by defendant in California jails while on a Washington hold during the pendency of this case (as a result of defendant's extradition)." (Emphasis added). While this would not limit Kirwan's ability to argue for additional credit, this portion of the plea agreement to which Kirwan affirmatively agreed, put him on notice as to a likely measure by which his credit for time served would be calculated. Limiting credit for time served to only that which has accrued after the warrant is served is an exceedingly reasonable determination by the trial court. Accordingly, we find no error and affirm.

While this appeal was pending, our supreme court issued its opinion in Blake, which deemed the statute criminalizing possession of a controlled substance to be unconstitutional. Slip op. at 30-31. On that basis, Kirwan moved to file a supplemental assignment of error, which we granted. The supplemental assignment of error argued that count two, possession of methamphetamine, should be vacated under Blake. In response, the State filed a motion to concede error only as to that charge, agreeing that it should be vacated and further conceding that Kirwan should be resentenced as to count one. We grant the

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State's motion and accept its concession. We direct the trial court to vacate Kirwan's conviction as to count two, recalculate his offender score, and resentence him on count one.

Affirmed in part and remanded for vacation of count two and resentencing.



WE CONCUR:

