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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0285**

Donquarius Davon Copeland, petitioner,
Appellant,
vs.

State of Minnesota,
Respondent.

**Filed November 20, 2017
Affirmed
Hooten, Judge**

Hennepin County District Court
File No. 27-CR-12-9635

Cathryn Middlebrook, Chief Appellate Public Defender; and

Bradford Colbert, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and
Hooten, Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant challenges the district court's ruling that he was not entitled to jail credit for the time he was in custody in another county on a different offense. We affirm.

FACTS

R.G. was shot and killed with a .357 semi-automatic handgun in Minneapolis on August 24, 2011, in what appeared to be a gang-related retaliation for a shooting several weeks earlier. While conducting an unrelated search approximately two days later, Minneapolis police officers discovered a .357 semi-automatic handgun in a house. The officers informed the Minneapolis Homicide Unit of their discovery, and a firearms analyst confirmed that it was the weapon used to kill R.G. Appellant Donquarius Copeland, his codefendant Derrick Catchings, and another individual were present at the house when police found the weapon.

On September 2, 2011, Copeland was jailed in Anoka County on an unrelated offense. The record indicates that in September 2011, police interviewed J.S.—who had been incarcerated with Catchings on a separate charge—and J.S. indicated that Catchings discussed his involvement in the murder. Then, in January 2012, Catchings made a partial admission.¹

On March 15, a grand jury was convened to consider charges against Catchings and any others who were involved in the murder. Later, Copeland made some incriminating statements regarding the murder.² The state presented evidence of these statements, along with testimony of a corroborating witness, to the grand jury on March 29, which returned

¹ The record presented on appeal is very sparse. The only evidence describing the police investigation is part of the testimony of Sergeant Chris Karakostas from Catchings's trial, and it does not include any details about what police were told by J.S., or whether Catchings's admission implicated Copeland.

² The record also does not contain any details of the content of Copeland's incriminating statements.

an indictment against Copeland that same day for two counts of murder in the first-degree and four counts of attempted murder in the first-degree.

Copeland pleaded guilty to one count of second-degree intentional murder and one count of attempted second-degree intentional murder. The district court sentenced Copeland to 410 months for the murder charge and 153 months for the attempt charge, to be served concurrently. The district court also awarded Copeland 730 days of jail credit, calculated from the March 29, 2012 indictment.

Then, Copeland filed a motion for additional jail credit of 209 days, which the district court denied, and Copeland appealed to this court.

D E C I S I O N

Copeland contends that the district court erred by denying his motion for additional jail credit, arguing that the state had probable cause to charge him with the R.G. murder as early as September 2, 2011, while he was in jail for a different offense. Alternatively, Copeland argues that the state had sufficient evidence to issue the charges in January 2012, when his codefendant made a partial admission to police, and that he should have received jail credit commencing on that date.

Deciding “whether to award [jail] credit is a mixed question of fact and law; the court must determine the circumstances of the custody the defendant seeks credit for, and then apply the rules to those circumstances.” *State v. Clarkin*, 817 N.W.2d 678, 687 (Minn. 2012) (quotation omitted). Appellate courts “review the factual findings underlying jail-credit determinations for clear error, but we review questions of law de novo.” *Id.*

Defendants bear the burden of establishing entitlement to jail credit. *State v. Garcia*, 683 N.W.2d 294, 297 (Minn. 2004). Credit is only awarded for concurrent sentences, not consecutive sentences. *Clarkin*, 817 N.W.2d at 685–86. If the defendant’s sentences would be concurrent, jail credit is awarded

for time spent in custody after the date when (1) the State has completed its investigation in a manner that does not suggest manipulation by the State, and (2) the State has probable cause and sufficient evidence to prosecute its case against the defendant with a reasonable likelihood of actually convicting the defendant of the offense for which he is charged.

Id. at 689. If the two prongs of *Clarkin* are met, the district court does not have discretion in whether to award jail credit. *State v. Johnson*, 744 N.W.2d 376, 379 (Minn. 2008). It “must . . . [s]tate the number of days spent in custody in connection with the offense,” including “time spent in custody from a prior stay of imposition or execution of sentence,” and is required to deduct that credit “from the sentence and term of imprisonment.” Minn. R. Crim. P. 27.03, subd. 4(B).

When the State Completed its Investigation³

The district court’s finding that the state did not complete its investigation of Copeland’s involvement in the R.G. murder until March 29, 2012 is not clearly erroneous. Copeland first points to September 2, 2011 as a possible date for the end of the state’s investigation. But, the investigation was just beginning, and the only evidence in the record linking Copeland to the murder was his presence at the house where police found the

³ The state does not challenge that Copeland’s Anoka County sentence would run concurrently with his sentences in this case.

murder weapon. Copeland next points to January 2012, when Catchings made a partial admission to police. However, there is nothing in the record describing what Catchings admitted and whether his admission implicated Copeland. Police continued to interview witnesses and gather evidence related to the R.G. murder until, and even after, Copeland's March 29, 2012 indictment, which supports the district court's finding that the investigation was not complete in January 2012.

Copeland does not argue that the state manipulated the date on which it completed its investigation, and there is no evidence to support such an argument. The district court did not err by concluding that the state had not completed its investigation of Copeland until March 29, 2012, when the grand jury returned an indictment against Copeland.

Probable Cause, Sufficient Evidence, and Reasonable Likelihood of Conviction

The record also supports the state's contention that it did not have probable cause and sufficient evidence to have a reasonable likelihood of convicting Copeland until March 29. Probable cause exists when "the evidence worthy of consideration . . . brings the charge against the prisoner within reasonable probability." *State v. Koenig*, 666 N.W.2d 366, 372 (Minn. 2003) (quotation omitted). But, *Clarkin* requires more, because the state must have evidence sufficient to create "a reasonable likelihood of actually convicting the defendant." 817 N.W.2d at 689.

For the two points in time that Copeland identifies, September 2011 and January 2012, the only evidence in the record implicating Copeland was his presence at the house

where police found the murder weapon.⁴ But Copeland's mere presence where the murder weapon was found is likely insufficient even to prove that Copeland possessed the gun, let alone that he used it to commit a homicide several days earlier. *See State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017) ("To establish that a defendant was consciously or knowingly exercising dominion and control over a firearm at the time in question, the State must prove more than the defendant's mere proximity to the firearm."). Because Copeland has not met his burden to show that, prior to the issuance of the indictment on March 29, 2012, the state had completed its investigation, and that the state had a reasonable likelihood of actually convicting him of the offenses for which he was charged, the district court did not err in denying Copeland's motion for additional jail credit.

Affirmed.

⁴ Because Copeland did not provide this court with a record describing what J.S. told police in September, or how, if at all, Catchings's partial admission in January implicated Copeland, we are not able to consider those statements in assessing whether the state had sufficient evidence to create a reasonable likelihood of convicting Copeland at the time that the statements were made. *Cf. State v. Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006) (holding that assertions of error without supporting facts are waived), *aff'd*, 728 N.W.2d 243 (Minn. 2007).