

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1420**

Michael John Husten, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 21, 2018
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CR-12-2130

Michael John Husten, Stillwater, Minnesota (pro se appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

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

Considered and decided by Reyes, Presiding Judge; Schellhas, Judge; and Jesson,
Judge.

UNPUBLISHED OPINION

REYES, Judge

In this appeal from the district court's denial of appellant's motion to correct his
sentence including 152 days of jail credit, appellant argues that he is instead entitled to 466

days of jail credit, calculated from the first day he was incarcerated on another unrelated charge. We affirm.

FACTS

On February 8, 1975, R.H. was murdered. Appellant Michael John Husten was a prime suspect in the murder, but no charges were filed against him due to a lack of evidence.

Approximately 34 years later, appellant was sentenced on April 8, 2009 for simple robbery and placed on probation for a period of three years. On December 10, 2010, police arrested appellant for a probation violation. On March 10, 2011, while still in prison, respondent State of Minnesota charged appellant with second-degree aggravated robbery for a November 2010 bank robbery. Appellant denied involvement in the bank robbery but confessed to R.H.'s murder, stating that he would rather serve a prison term for the crime he actually committed than for one he did not commit.

On March 21, 2012, appellant pleaded guilty to second-degree intentional murder. The terms of the plea agreement included the state's dismissal of the aggravated-robbery charge in exchange for imposition of a 20-year sentence with 152 days of jail credit. The district court calculated the jail credit from October 21, 2011, the date appellant admitted to R.H.'s murder. During sentencing, appellant agreed that the jail credit should be calculated from that date.

After sentencing, appellant filed several unsuccessful post-conviction petitions and motions, none of which raised the issue of jail credit. On May 12, 2017, appellant filed a motion for corrected sentence, arguing that he is entitled to 466 days of jail credit beginning

December 10, 2010, when he was first arrested for a probation violation, to March 21, 2012, when he was sentenced for the murder. The district court denied the motion, and this appeal follows.

DECISION

Appellant argues that, because his confinement was continuous and uninterrupted, the district court erred by calculating his jail credit from the date he confessed to the murder rather than from the date of his incarceration. We are not persuaded.

“[The] decision 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. Johnson*, 744 N.W.2d 376, 379 (Minn. 2008). We review the district court’s underlying factual findings for clear error and questions of law de novo. *State v. Clarkin*, 817 N.W.2d 678, 687 (Minn. 2012). The sentencing court does not have discretion in awarding jail credit. *Johnson*, 744 N.W.2d at 379; see Minn. R. Crim. P. 27.03, subd. 4(B). The defendant bears the burden of establishing entitlement to jail credit. *State v. Garcia*, 683 N.W.2d 294, 297 (Minn. 2004).

A criminal defendant is entitled to jail credit for time spent in custody “in connection with the offense or behavioral incident being sentenced.” Minn. R. Crim. P. 27.03, subd. 4(B). If a defendant is already in custody on another offense before being charged with the instant offense, the defendant can receive jail credit from “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.” *Clarkin*, 817 N.W.2d at 689 (emphasis added).

Here, the record supports the district court’s finding that, prior to appellant’s admissions regarding the convicted offense, the state did not have probable cause to believe appellant was involved in the murder and sufficient evidence to prosecute him for the murder. R.H. was murdered 35 years ago, and it was appellant who brought the murder of R.H. to the attention of both the district court and the prosecution. Aside from appellant’s confession, the state did not have any reason to revisit R.H.’s murder again after 35 years. Furthermore, as the district court properly found, nothing in the record suggests that the state manipulated sentencing by deliberately delaying charging appellant with the murder of R.H., and appellant does not claim so. Therefore, appellant failed to meet his burden to establish that, on December 10, 2010, the state completed its investigation without manipulation and had probable cause and sufficient evidence to prosecute appellant for the murder. The district court correctly applied the rule that appellant is entitled to jail credit for time spent in custody in connection with the murder calculated from the date he confessed to the murder. Therefore, the district court did not err in awarding appellant 152 days of jail credit.

Affirmed.