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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1632
A17-1633**

State of Minnesota,
Respondent,

vs.

Glenn DeJwuan Truesdale,
Appellant

**Filed September 24, 2018
Reversed and remanded
Smith, John, Judge***

Hennepin County District Court
File Nos. 27-CR-17-3638, 27-CR-13-19257

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Kirk, Judge; and Smith, John,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SMITH, JOHN, Judge

We reverse the district court's order denying appellant Glenn DeJwan Truesdale's jail credit request for time spent at Mesabi Academy juvenile treatment facility because it was a locked facility that was functionally equivalent to a jail, workhouse or regional correctional facility, and we remand for a determination of the appropriate jail credit.

FACTS

Appellant was designated as an extended jurisdiction juvenile (EJJ) and pleaded guilty to multiple counts of aggravated robbery and kidnapping in 2011. The district court adjudicated appellant delinquent and imposed a stayed adult sentence totaling 178 months. As a probation condition, Truesdale was placed at Mesabi Academy from April 7, 2011, until June 29, 2012. In 2017, Truesdale admitted violating probation, and the district court executed the 178-month adult sentence. Truesdale moved for jail credit for time spent at Mesabi Academy.

At the hearing on Truesdale's motion, Kendra Roberg, who visited Mesabi Academy frequently as part of her employment, testified about the layout and treatment program at Mesabi Academy. Bedrooms were monitored by motion detectors, and staff could see all of the bedrooms from a desk area. Except for a conference room used for attorney/client meetings, common rooms and areas were monitored by cameras. The motion detectors and cameras were monitored from a central command center. Mesabi Academy had eight or nine secure cells that were equipped for the use of mechanical restraints. The treatment program had four phases; home visits were allowed during phases

three and four, and residents were allowed to volunteer in the community during phase four. Truesdale had five home visits during his placement at Mesabi Academy.

Mesabi Academy was represented as a juvenile correctional facility in marketing materials and was licensed by the Minnesota Department of Corrections (DOC). Roberg testified that residential treatment facilities are generally licensed by the Minnesota Department of Human Services (DHS). DOC and DHS have different sets of licensing requirements, and while some facilities are licensed by both departments, Mesabi was only licensed by the DOC. We note that facilities licensed by DHS in 2012 were allowed to seek verification for “limited use of mechanical restraints,” but only for transporting a resident. Minn. R. 2960.0710, subp. 3(D) (2011). DOC-licensed facilities had broader ability to seek certification for mechanical restraints without that restriction.

Lieutenant Kurt Streed, an employee of the Minnesota Correctional Facility–Red Wing, testified about conditions in the Red Wing residential juvenile corrections program, including its physical layout, treatment program, and security measures. Bedrooms were unlocked and not monitored by cameras, but residents were not allowed to visit each other. Residents’ movements within and between units were monitored by radio and camera. In the secure unit, all doors locked electronically, and cell doors were equipped for restraints. The treatment program had six levels, the last two of which included furloughs.

Streed was also familiar with Mesabi Academy, as he had conducted an audit there in 2015. Streed testified that confinement conditions at Mesabi Academy and Red Wing are similar in terms of physical structure and supervision. Distinctions noted by Steed were that staff accompanied boys at Mesabi Academy whenever they moved about the facility,

whereas camera monitoring was used at Red Wing, and Mesabi Academy had fewer cameras and a smaller incident response team. Also, Red Wing was surrounded by a secure perimeter fence, and electronic locks were used on gates and doors at Red Wing, whereas keyed locks were used at Mesabi Academy.

The district court denied Truesdale's motion for jail credit.

D E C I S I O N

"The decision whether to award credit is a mixed question of fact and law." *State v. Clarkin*, 817 N.W.2d 678, 687 (Minn. 2012) (quotation omitted). We review the district court's factual findings for clear error and its application of law de novo. *Id.* The district court does not have discretion to award jail credit. *Id.*

A defendant is entitled to jail credit for time spent in a treatment facility if the placement's "level of confinement and limitations imposed are the functional equivalent of a placement in a jail, workhouse, or regional correctional facility." *Asfaha v. State*, 665 N.W.2d 523, 523-24 (Minn. 2003). "Awards of jail credit are governed by principles of fairness and equity and must be determined on a case-by-case basis. A defendant has the burden of establishing that he is entitled to jail credit for a specific period of time." *State v. Arend*, 648 N.W.2d 746, 748 (Minn. App. 2002) (quotation omitted).

In *State v. Garcia*, the supreme court held that a defendant was entitled to receive credit against a revoked EJJ sentence for the time he was placed at Red Wing. 683 N.W.2d 294, 301 (Minn. 2004). Truesdale argues that placement at Mesabi Academy is comparable to confinement at Red Wing and, therefore, he is entitled to credit for the time he was placed at Mesabi Academy.

Although Mesabi Academy was run by a private entity, it was licensed by the DOC as a correctional facility. Residents were accompanied by staff when they moved about the facility and were monitored by cameras in all common areas and rooms. Bedrooms were monitored by motion detectors, and staff could see all of the bedrooms from a desk area. The motion detectors and cameras were monitored from a central command center. All doors exiting the residents' area were secure doors that needed to be unlocked with a key to permit exit. Mesabi Academy had secure cells that were equipped for the use of mechanical restraints.

In denying Truesdale's motion, the district court relied in part on the treatment programs provided at Mesabi Academy. But Red Wing and other correctional facilities also offer treatment programs. Distinctions between Red Wing and Mesabi Academy, such as the lack of a secure perimeter fence at Mesabi Academy and doors there being unlocked with a key rather than electronically, are not significant.

When residents were at the Mesabi Academy facility, they were locked in and their movements were closely monitored by staff via cameras, motion detectors, and personal observation. The facility included mechanical restraints: "safety" chains, leg locks and waist shackles. Secure cells were available as a disciplinary measure, and at the beginning of his stay, whenever Truesdale was transported outside of Mesabi, he was moved in shackles and with a cinch on his waist and legs. These are all components of a jail-like setting. Therefore, we conclude that Truesdale was entitled to jail credit for the time he spent in residence at the Mesabi Academy facility. We reverse the denial of jail credit and

remand to the district court for a determination of the appropriate jail credit and whether Truesdale is entitled to jail credit for days when he was on furlough and home visits.

Reversed and remanded.