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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0460**

State of Minnesota,
Respondent,

vs.

Susan Marie Erickson,
Appellant.

**Filed November 13, 2018
Affirmed
Johnson, Judge**

Renville County District Court
File No. 65-CR-12-382

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

David Torgelson, Renville County Attorney, Laurence Stratton, Assistant County
Attorney, Olivia, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Johnson,
Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Susan Marie Erickson was detained for five-and-one-half months between the
issuance of a probation-violation report and the district court's revocation of her probation.

The district court awarded her custody credit for the entire time she was detained. On appeal, Erickson argues that this court should reverse the revocation of her probation and reinstate her probation on the ground that the district court did not hold a probation-violation hearing in a timely manner. We conclude that, regardless whether the district court erred, Erickson is not entitled to reversal and reinstatement because she received custody credit for the entire time she was detained. Therefore, we affirm.

FACTS

In 2014, Erickson pleaded guilty in Renville County to a charge of first-degree controlled-substance crime. The district court imposed a sentence of 132 months of imprisonment but stayed the execution of the sentence and placed her on probation for seven years.

On July 3, 2017, a corrections agent issued a probation-violation report in which he alleged that Erickson committed three probation violations in June 2017. On July 5, 2017, the district court issued a warrant for Erickson's arrest and detention. On August 4, 2017, Erickson personally wrote a letter to the assigned district court judge, informing him that she was being detained in the Kandiyohi County jail. On August 8, 2017, the district court scheduled a hearing for September 25, 2017.

Erickson appeared at the September 25, 2017 hearing and denied the alleged violations. The district court scheduled a probation-violation hearing for November 2, 2017.

At the November 2, 2017 hearing, the state requested a continuance on the ground that one of its witnesses was unavailable. The district court granted the request and rescheduled the hearing for November 7, 2017.

At the November 7, 2017 hearing, the state presented the testimony of two witnesses and rested its case. Erickson's attorney requested that the hearing be continued so that he could present the testimony of Erickson's chemical-dependency counselor, who had been subpoenaed but had not appeared due to the advice of counsel. The state did not object, and the district court granted Erickson's request. The district court noted that Erickson's jail term in Kandiyohi County was due to expire on November 13, 2017, and stated that Erickson should be transferred to the Renville County jail after that date. The district court issued an order stating that Erickson was informed of the reasons for the continuance and was "agreeable" to it.

On November 22, 2017, Erickson personally wrote a letter to the assigned district court judge in which she asked to be released in light of her right to a probation-violation hearing within seven days. She stated that she was "still . . . waiting for the witnesses the prosecution wanted." On November 28, 2017, the district court judge responded in a letter to Erickson, with copies to her attorney and the prosecutor, stating that "the delay of rescheduling was at [her] request" and that if she had changed her mind and did not wish to present the testimony of her treatment counselor, she should so inform her attorney, in which case the district court would set another hearing date. The district court judge concluded the letter by stating that the court "will wait to hear from your attorney as to the resolution of the legal challenge to the treatment counselor subpoena."

On December 1, 2017, the district court scheduled a probation-violation hearing for December 14, 2017. At that hearing, Erickson presented the testimony of two chemical-dependency treatment counselors. Erickson had planned to testify on her own behalf. But at approximately 4:25 p.m., the district court stated that it would not be possible to complete the hearing that day. Erickson objected to a continuance, but the district court continued the hearing to December 19, 2017.

At the December 19, 2017 hearing, Erickson completed her presentation of evidence by testifying on her own behalf. The district court made an oral finding that Erickson had violated the terms of her probation. On December 20, 2017, the district court issued an order in which it revoked Erickson's probation and executed her prison sentence. In the order, the district court stated that Erickson "shall receive all jail credit to date, which is 651 days through December 20, 2017." The district court file contains a memorandum from Erickson's probation officer to the district court with a calculation of Erickson's custody credit. The probation officer included all time Erickson spent in custody between the July 3, 2017 probation-violation report and the December 20, 2017 order, including time spent both in Kandiyohi County and in Renville County. Erickson appeals.

D E C I S I O N

Erickson argues that the district court erred by not holding a probation-revocation hearing within seven days, as required by rule 27.04, subdivision 2(4)(b), of the rules of criminal procedure. She further argues that the appropriate remedy is a reversal of the revocation of her probation and the reinstatement of her probation.

The United States Supreme Court has held that a probationer has a constitutional right, based on the Due Process Clause of the Fourteenth Amendment, to a revocation hearing within a reasonable time. *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82, S. Ct. 1756, 1759-60 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 487-88, 92 S. Ct. 2593, 2603-04 (1972). In Minnesota, this constitutional right is embodied in the rules of criminal procedure, which state, “The revocation hearing must be held within a reasonable time.” Minn. R. Crim. P. 27.04, subd. 2(4)(a). The rules further state, “If the probationer is in custody because of the violation report, the hearing must be within 7 days.” *Id.*, subd. 2(4)(b). If a district court does not hold a probation-violation hearing within seven days and later revokes probation, the former probationer is entitled to custody credit for the excessive time spent in custody awaiting the probation-violation hearing. *See State v. Compton*, 340 N.W.2d 358, 360 (Minn. App. 1983).

Erickson’s argument for reversal is based on the second rule quoted above. She asserts that the seven-day period began to run when she arrived at the Renville County jail on November 13, 2017. But she does not discuss whether a hearing must be completed within seven days or whether continuances are permitted. She also does not specify precisely when the district court committed error. She simply argues, “Where a probationer is revoked after an unreasonable delay in holding a hearing, the only remedy is reversal for reinstatement on probation.” For this proposition, she cites two precedential opinions of this court: *Compton* and *State v. Liebfried*, 345 N.W.2d 281, 283 (Minn. App. 1984).

Erickson misreads *Compton* and *Liebfried*. Neither opinion authorizes the remedy she seeks. In *Compton*, this court determined that there was a six-month delay in holding

a probation-revocation hearing and, accordingly, concluded that the appellant was “entitled to credit against the sentence for the time period between the issuance of the arrest and detention order and the actual revocation and execution of sentence.” 340 N.W.2d at 360.

In *Liebfried*, this court determined that the district court erred by detaining a probationer for two months before holding a probation-revocation hearing. 345 N.W.2d at 282-83. We also determined that the district court erred by imposing a sentence that was 48 months longer than the presumptive sentence without stating reasons for a departure. *Id.* at 283. We concluded by reversing the revocation of appellant’s probation, but that remedy was necessary because the appellant already had served more prison time than permitted by the presumptive guidelines sentence. *Id.* As such, the reversal of the revocation of Liebfried’s probation was not attributable to the district court’s failure to hold a probation-violation hearing within seven days. *See id.*

Accordingly, we look to *Compton* for the appropriate remedy for a violation of rule 27.04, subdivision 2(4)(b). The *Compton* opinion demonstrates that the proper remedy is an award of custody credit. 340 N.W.2d at 360. Erickson has not cited any other precedential opinion for the proposition that she is entitled to reversal of the revocation of her probation, and we are not aware of any such caselaw.

Erickson received custody credit for the entire time between the July 3, 2017 probation-violation report and the December 20, 2017 order revoking her probation. In light of that fact, we need not decide whether the district court erred by not holding a probation-revocation hearing within seven days, as required by rule 27.04, subdivision 2(4)(b). Assuming without deciding that such an error occurred, Erickson already has

received the remedy to which she would be entitled. Thus, the district court did not err by revoking her probation and executing her sentence instead of reinstating her probation.

Affirmed.