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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1720**

State of Minnesota,
Respondent,

vs.

Craig Stevens Handeland,
Appellant.

**Filed June 24, 2019
Affirmed in part, reversed in part, and remanded
Jesson, Judge**

Mille Lacs County District Court
File No. 48-CR-12-2074

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Joe Walsh, Mille Lacs County Attorney, Erica Madore, Assistant County Attorney, Milaca,
Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Amy Lawler, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Jesson, Judge; and Smith,
Tracy M., Judge.

UNPUBLISHED OPINION

JESSON, Judge

The central issue before us is how much—if any—custody credit is due to appellant
Craig Stevens Handeland for time spent in custody in other Minnesota jurisdictions, on

separate charges, before the execution of his driving while impaired (DWI) sentence. This issue includes whether days spent in secure treatment, while undergoing competency restoration in an unrelated case, should be accorded credit as well. Handeland further challenges the district court's decision to revoke his probation and execute the imposed sentence.

We conclude that the district court erred in granting only eight days of custody credit to Handeland in connection with his newly executed DWI sentence. And we remand to the district court to consider whether, applying the test for intrajurisdictional custody (custody within Minnesota), Handeland is further entitled to credit for time spent in local jails and secure treatment while on probation prior to its revocation. But as to the probation revocation itself, the district court properly applied the law and acted within its discretion. Therefore, we affirm in part, reverse in part, and remand.

FACTS

In September 2012, appellant Craig Stevens Handeland drove through the streets of Princeton while drunk. Handeland's past includes a litany of convictions for DWI and underage drinking and driving. His alcohol content at the time of this arrest was 0.22. He was charged with, and pleaded guilty to, felony DWI.¹

After his plea, the Mille Lacs County District Court sentenced Handeland to 42 months in prison in early 2013. But the judge stayed execution of the sentence and,

¹ In violation of Minn. Stat. § 169A.20, subd. 1(5) (2012).

after ordering Handeland to serve 180 days in jail, placed him on probation for seven years.²

Handeland's probation progressed smoothly for several years. Then, in April 2016, Benton County officials arrested him for first-degree DWI³ after he drove an all-terrain vehicle (ATV) in a ditch under the influence of methamphetamine. But the district court in Benton County found Handeland incompetent to stand trial and ordered him into the state's competency restoration program.⁴ Handeland was admitted to Anoka Metro Regional Treatment Center where he was diagnosed with schizophrenia, treated for his condition, and received competency-restoration services. That November, Handeland was found competent to stand trial, and his Benton County criminal case therefore resumed.

Handeland ultimately pleaded guilty to the Benton County DWI offense in April 2018. But between the November competency determination and the April plea, Handeland was arrested on two separate fifth-degree controlled-substance offenses and spent additional days in local jails related to those offenses.

At the June DWI sentencing in Benton County, the district court granted Handeland a downward dispositional departure. Accordingly, the district court sentenced Handeland

² Ninety days of Handeland's jail term was to be served on electronic alcohol monitoring. He served 60 days in jail.

³ In violation of Minn. Stat. § 169A.20, subd. 1(7) (2014).

⁴ To ensure that a defendant is competent to understand and participate in criminal proceedings, the Minnesota Rules of Criminal Procedure provide a medical-examination process when competency is in doubt. Minn. R. Crim. P. 20.01, subds. 3, 4. If the court determines the defendant is not competent, the criminal proceedings are suspended, and the civil commitment process can be instituted. *Id.*, subd. 6(b). When and if the defendant becomes competent, the criminal proceedings are resumed. *Id.*, subd. 6(a).

to 60 months in prison, stayed execution of the sentence and placed him on probation for seven years. The court awarded him 194 days of jail credit.

This Benton County sentence brings us back to where we began these facts: in Mille Lacs County. For the incident in Benton County had led authorities in Mille Lacs County to file a probation-revocation report earlier in 2018. And in August 2018, the parties appeared for a probation-violation hearing there. The department of corrections recommended in its probation-violation report that the stay of execution on Handeland's Mille Lacs County DWI be vacated and that he was entitled to 159 days of jail credit against the executed sentence. The district court revoked Handeland's probation, concluding that public safety needs substantially outweighed the preference for probation given Handeland's numerous DWIs and attendance problems in community treatment. Handeland's sentence was executed on the Mille Lacs County DWI, and he was committed to the commissioner of corrections for 42 months. The court awarded him only eight days of custody credit against this sentence.

Handeland appeals.

D E C I S I O N

Handeland contends that he is entitled to have 389 days of additional custody credit applied to his executed Mille Lacs County sentence, comprised of 60 days at the Mille Lacs County jail, 194 days largely related to the intervening Benton County DWI sentence, and 135 days at the Anoka Metro Regional Treatment Center while being restored to competency following the rule 20 examination. He further argues that the district court erred by revoking his probation on the Mille Lacs County DWI.

The two issues before us call for divergent standards of review. Once the district court determines the circumstances of the custody the defendant seeks credit for (a factual finding we review for clear error), it must “then apply the rules to those circumstances.” *State v. Johnson*, 744 N.W.2d 376, 379 (Minn. 2008). A sentencing court has no discretion in this award of custody credit, and we review its determination de novo. *State v. Clarkin*, 817 N.W.2d 678, 687 (Minn. 2012). On the other hand, the district court has broad discretion in determining whether sufficient evidence exists to revoke probation, and this court will reverse only if there is a clear abuse of that discretion. *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). With these parameters in mind, we address each issue in turn.

I. The district court erred in its calculation of Handeland’s custody credit.

Between his 2012 Mille Lacs County arrest for DWI and the 2018 execution of his 42-month sentence for that DWI, Handeland spent approximately 389 days in custody. Those days largely fall into three buckets: the days spent in the Mille Lacs County jail related to the 2012 DWI; the days spent in local jails related to other convictions (primarily an additional DWI arrest and conviction in Benton County) and days spent in examination and treatment as part of his competency restoration. To properly calculate Handeland’s custody credit, we first address the Mille Lacs County jail time, clearly related to the underlying DWI conviction. Next, because both the second and third buckets of days involve unconnected cases, we then turn to the issue of how to evaluate credit for intrajurisdictional custody. Finally, we address the custody-credit standards for secure treatment for competency-restoration purposes.

60 days in Mille Lacs County Jail

This initial issue is straightforward: whether Handeland is entitled to jail credit for time spent in the local jail after his arrest (five days) and after the judge ordered him to spend time in the Mille Lacs County jail as part of his original sentence (an additional 55 days). The answer is “yes” on both accounts. The Minnesota Rules of Criminal Procedure clearly state that 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) (emphasis added). As the state concedes on appeal, although these days were not discussed at Handeland’s probation-violation hearing, they clearly were time spent in custody in connection with the original sentence and should count as custody credit.

Credit for Time Spent in Custody on Unconnected Cases

The straightforward analysis for time spent in the Mille Lacs County jail is juxtaposed against the relative complexity of the next issue: credit for custody on unconnected cases. Although the Minnesota Rules of Criminal Procedure dictate credit for time spent in custody on the underlying case (here, the sentence for Handeland’s 2012 Mille Lacs County DWI), it is silent regarding time spent in custody on other charges. But appellate caselaw across the past three decades fills this gap, as we address below.

Before the adoption of the sentencing guidelines in 1981,⁵ those convicted of a crime in Minnesota were not entitled to any credit for time spent in custody prior to their

⁵ The Minnesota Legislature established the sentencing guidelines commission in 1978, and tasked it with creating the sentencing guidelines, meant to be advisory to the district

conviction. *See State v. Kotlarek*, 155 N.W.2d 891, 893 (Minn. 1968) (interpreting the applicable statute as granting no power to give a defendant credit for time spent in custody from arrest until sentencing). And in the years closely following the adoption of the sentencing guidelines, caselaw continued to focus on whether the time in jail was served in connection with the offense of conviction against which credit was sought. *See State v. Vaughn*, 361 N.W.2d 54, 59 (Minn. 1985) (holding that the district court properly refused to award jail credit for time served in connection with a prior, unrelated conviction). Similarly, in *State v. Brown*, where the issue centered on time the defendant spent in custody *out-of-state*, the supreme court concluded that the defendant was only entitled to custody credit if the time in jail was “in connection with” the Minnesota charge. 348 N.W.2d 743, 747-48 (Minn. 1984).

Brown and its progeny continue to limit credit for time in custody outside of Minnesota boundaries. *State v. Roy*, ___ N.W.2d ___, ___, 2019 WL 2203545, at *2 (Minn. May 22, 2019). However, as the supreme court recently reiterated, this bright-line approach does not apply to custody within Minnesota. *Id.* As the court explained:

In evaluating credit for intrajurisdictional custody, we seek to avoid four potential concerns: “de facto conversion of a concurrent sentence into a consecutive sentence; indigent persons serving effectively longer sentences as a result of their inability to post bail; irrelevant factors . . . affecting the length of incarceration; and manipulation of charging dates by the prosecutor so as to increase the length of incarceration.

courts. 1978 Minn. Laws. ch. 723, art. 1, § 9, at 765-66. Unless there are “identifiable, substantial, and compelling circumstances” to depart, the district courts are expected to follow the sentencing guidelines. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotation omitted).

Id. (quoting *Johnson*, 744 N.W.2d at 379); see *State v. Goar*, 453 N.W.2d 28, 30 (Minn. 1990) (broadly granting jail credit for all time spent in custody in Minnesota between an individual’s arrest and sentencing, even on cases that were unrelated).

Having reviewed the governing approach to intrajurisdictional credit, we turn to the time Handeland spent in other local jails. This constitutes 194 days—primarily related to the Benton County DWI—between his original Mille Lacs County sentencing and his probation revocation five years later. The majority of these days were recognized in the probation-violation report, but—perhaps relying on the wording of Minnesota Rule of Criminal Procedure 27.03—the district court awarded credit for none of them. To deny credit without evaluating these days in light of the intrajurisdictional approach described above was error.

Still, the state seeks refuge in two arguments. First, the state contends that permitting this custody credit would result in “an unfair double credit,” because Handeland already received credit for them on his Benton County sentence. We disagree. Because Handeland’s Benton County sentence is *stayed*, he has yet to receive the benefit from the jail credit. As the department of corrections initially recommended, this custody credit should have been applied to Handeland’s *executed* sentence.⁶

Second, the state argues that custody credit is improper when it is obtained from a subsequent first-degree DWI. The state points to Minnesota Statutes section 169A.28,

⁶ Handeland’s Benton County DWI sentence is not an issue before us on appeal, therefore any unfair double credit that he may have received on his Benton County file is a matter to be corrected by the district court, not this court.

subdivision 1(a)(1) (2014), which mandates consecutive sentences for each conviction that a driver incurs arising out of separate courses of conduct.⁷ And if the sentences are consecutive, then custody credit should only be awarded once. *Townsend v. State*, 834 N.W.2d 736, 740 (Minn. 2013). Handeland disagrees. He contends that the mandate for consecutive sentences does not apply to felony DWIs. Minn. Stat. § 169A.28, subd. 1(b) (2014).

But we need not address this underlying dispute. Here, there is no indication that the Benton County District Court intended Handeland’s 2016 sentence to be consecutive to his Mille Lacs County sentence. *Clarkin* directs this court, for purposes of custody credit, to *presume* the sentence was concurrent when the record is silent as to whether the district court intended sentences to be concurrent, consecutive, or a departure from either. 817 N.W.2d at 686-87. And this record is silent. Consistent with this presumption, we conclude that Handeland’s sentences are concurrent for purposes of applying the intrajurisdictional-custody-credit analysis. Accordingly, the district court erred by failing to credit Handeland, without further evaluation, with all of the time he spent in local jails from his arrest on April 29, 2016 until his sentence was executed on August 1, 2018.

Custody Credit for Court-Ordered Competency Restoration

Having addressed the standard for assessing custody credit for time spent in jail on unconnected offenses, we turn to a more nuanced issue: that of time spent in a secure

⁷ “The court shall impose consecutive sentences when it sentences a person for . . . violations of section 169A.20 (driving while impaired) arising out of separate courses of conduct.” Minn. Stat. § 169A.28, subd. 1(a)(1).

facility for purposes of competency restoration in one of these unconnected offenses. The state asserts that neither rule nor precedent justifies this additional extension of custody credit. Handeland, on the other hand, points to the same rule and precedent to argue that credit is due. To address this question, we begin with rule 20 of the Minnesota Criminal Rules of Procedure. We then consider relevant caselaw, beginning with the case relied upon by both parties: *State v. Bonafide*, 457 N.W.2d 211 (Minn. App. 1990). Finally, we apply this precedent to Handeland’s situation.

Rule 20.01 of the Minnesota Rules of Criminal Procedure provides for a two-step process when competency is questioned. First, an examination period to determine if the defendant is incompetent, meaning he either lacks the ability to rationally consult with defense counsel or is incapable of understanding the criminal proceedings or participating in the defense. Minn. R. Crim. P. 20.01, subds. 2, 4(a). Second, if the individual is found incompetent, a period of treatment (often under commitment and in a secure facility) ensues to restore competency. Minn. R. Crim. P. 20.01, subd. 6. And the final provision of rule 20.01 addresses credit for related confinement. That subdivision states:

If the defendant is convicted, any time spent confined to a hospital or other facility *for a mental examination* under this rule must be credited as time served.

Minn. R. Crim. P. 20.01, subd. 11 (emphasis added).

As the state suggests, the rule only dictates jail credit for the examination period. Minn. R. Crim. P. 20.01, subd. 11. But our inquiry does not end with this rule. As this court explained in *Bonafide*, the language of the rule may simply not address—rather than affirmatively exclude—credit for competency-restoration treatment during a commitment.

457 N.W.2d at 213. And to examine this issue of credit for treatment, the *Bonafide* court first looked at the supreme court’s expansion of custodial credit, in light of “the philosophy behind the rule.” *Id.* at 214. This court also, citing other state court decisions, explained that “the degree of deprivation of liberty in a mental commitment facility is equivalent to a jail or prison facility.” *Id.* And this court took note of the ABA Criminal Justice Mental Health Standard, which provides that a defendant detained for examination of competence “or treatment . . . to effect competence to stand trial should receive credit against any sentence ultimately imposed for the time of such pretrial confinement.” *Id.* at 215. As a result, the *Bonafide* court interpreted rules 20.01 and 27.03, subd. 4, as requiring credit against sentence for custodial time spent in a secure hospital under a rule 20 *presentence* commitment procedure. *Id.*⁸

We see no reason to retreat from *Bonafide*, to the more restrictive reading of rule 20 the state suggests. Our decision is guided by precedent regarding custody credit in the almost 30 years since that decision. In *Asfaha v. State*, the supreme court concluded that where a residential treatment facility imposed “essentially the same limitations on a person’s freedom as a jail . . . [f]airness and equity require that jail credit be granted in such cases so as to not elevate form over substance.” 665 N.W.2d 523, 527-28 (Minn. 2003). The supreme court also relied upon the principle of uniformity when directing district

⁸ The state, relying on comment 3.C.04 to the sentencing guidelines, argues that credit is only appropriate for time spent in jails, workhouses, and regional correctional facilities. But as this court stated in *Bonafide*, these comments are not promulgated or approved by the supreme court. 457 N.W.2d at 213.

courts to award jail credit where “the level of confinement and limitations imposed are the functional equivalent” of a workhouse or jail. *Id.* at 528.⁹

Turning to Handeland’s experience in competency restoration, we begin with his rule 20 competency examination, which took place in the Benton County jail. With his incompetency determined, Handeland was sent¹⁰ to Anoka Metro Regional Treatment Center for competency-restoration services. Sometime between his time in secure treatment at Anoka and the court hearing in November 2017—where the court declared Handeland competent to stand trial—Handeland spent time in treatment at Touchstone Intensive Residential Treatment program as well. He does not seek custody credit for his time at Touchstone.

Applying the holding of *Bonafide*, we conclude that Handeland is entitled to custody credit for time spent in a secure state hospital, including Anoka, under a rule 20 presentence-commitment procedure, just as he would receive credit for the underlying jail time related to the Benton County DWI. Accordingly if, applying the intrajurisdictional-custody analysis outlined above, the district court awards credit for local Benton County jail time accrued during Handeland’s probation, then it should also credit

⁹ While the supreme court in *Johnson* denied custody credit for time spent in confinement for a civil commitment, in part because the commitment was unrelated to the current criminal charges, that case is distinguishable. 744 N.W.2d at 380. It involved an individual under commitment as a sexual offender who was later convicted of terroristic threats and assault against staff members at the treatment facility, not treatment to restore competency in a rule 20 setting. *Id.*

¹⁰ The court order committing Handeland to Anoka is not part of this court record.

Handeland with time spent in treatment during custody at Anoka Metro Regional Treatment Center before Handeland's competency was restored.

In sum, when calculating the amount of custody credit due Handeland on remand, the district court should award 60 days of custody credit for the time Handeland spent in the Mille Lacs County jail, and determine custody credit due Handeland, including for his time spent in local jails on unrelated charges and time spent in secure treatment during custody at Anoka Metro Regional Treatment Center, in accordance with the intrajurisdictional custody approach.

II. The district court did not abuse its discretion by revoking Handeland's probation.

Before revoking probation, the district court "must (1) designate the specific condition or conditions that were violated; (2) find that the violation was intentional or inexcusable; and (3) find that need for confinement outweighs the policies favoring probation." *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). In assessing the third *Austin* factor, the supreme court has stated that district courts "should refer" to the following American Bar Association Standards for Criminal Justice:

Revocation followed by imprisonment should not be the disposition . . . unless the court finds on the basis of the original offense and the intervening conduct of the offender that:

- (i) confinement is necessary to protect the public from further criminal activity by the offender; or
- (ii) the offender is in need of correctional treatment which can most effectively be provided if he is confined; or
- (iii) it would unduly depreciate the seriousness of the violation if probation were not revoked.

State v. Modtland, 695 N.W.2d 602, 607 (Minn. 2005) (quoting *Austin*, 295 N.W.2d at 251).

“The decision to revoke cannot be a reflexive reaction to an accumulation of technical violations but requires a showing that the offender’s behavior demonstrates that he or she cannot be counted on to avoid antisocial activity.” *Austin*, 295 N.W.2d at 251 (quotations omitted). There must be clear and convincing evidence that a probation violation exists. Minn. R. Crim. P. 27.04, subds. 2(1)(c)b, 3(1). “The [district] court has broad discretion in determining if there is sufficient evidence to revoke probation and should be reversed only if there is a clear abuse of that discretion.” *Austin*, 295 N.W.2d at 249-50.

Handeland contends that the district court abused its discretion by revoking his probation because evidence did not establish that the need for confinement outweighed the policies favoring probation. He argues that his new offense was due to previously undiagnosed schizophrenia, which would be better treated in the community than in prison. To support this argument, he points to the stay of execution that was granted in his Benton County DWI case two months earlier as proof that community programming was sufficient and that he was “flourishing” after being diagnosed and receiving treatment for his mental illness for the first time.

But when it came to the issue of whether treatment could be effectively provided in the community, the Mille Lacs County judge appropriately turned to Handeland’s probation officer. The judge inquired about Handeland’s *current* treatment. That officer

testified that Handeland was on the verge of being expelled from his dual-diagnosis mental-health program for lack of attendance. He explained that Handeland “has currently only attended three of the twelve sessions for aftercare . . . and if he misses another one he’ll be discharged from the program.” Given this information, some of which appears to have occurred after the Benton County judge’s stay of execution, the district court did not abuse its discretion in determining that—given a pattern of DWIs over the course of 15 years and Handeland’s attendance problems in treatment in the community after receiving a sentencing departure—the balance between probation and the need for confinement favored protecting the public from Handeland’s behavior.¹¹

Because it appropriately weighed the need for Handeland’s confinement against the policies favoring probation, the district court acted within its discretion in revoking Handeland’s probation. But it erred in determining the amount of custody credit due to Handeland against his newly executed DWI sentence. Rather than eight days of credit, Handeland was entitled to the time spent in jail on the underlying offense. In addition, the district court must evaluate Handeland’s request for credit for time spent in jail and in

¹¹ Handeland also argues that the Benton County DWI was distinguishable from his prior DWIs because it involved driving an ATV in a ditch while impaired by methamphetamine, whereas his previous DWIs all involved driving a car on a road while impaired by alcohol. But the district court, acting well within its discretion, found no distinction between the substance leading to the Benton County DWI, which was the seventh impaired-driving offense in Handeland’s lifetime. Nor does Handeland point to any authority that a distinction between substances creates the potential for an abuse of discretion in revoking probation.

custody at Anoka Metro Regional Treatment Center while undergoing competency restoration before execution of his Mille Lacs County DWI sentence.

Affirmed in part, reversed in part, and remanded.