

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0243**

State of Minnesota,
Respondent,

vs.

George Robert Lyons,
Appellant.

**Filed August 22, 2022
Affirmed
Klaphake, Judge ***

Polk County District Court
File No. 60-CR-15-2281

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

Greg Widseth, Polk County Attorney, Scott Buhler, First Assistant County Attorney,
Crookston, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rochelle R. Winn, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Bryan, Judge; and Klaphake,
Judge.

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

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Appellant challenges the district court's denial of his motion for jail credit. Because we discern no error in the district court's decision, we affirm.

DECISION

Appellant George Robert Lyons was convicted in both North Dakota and Minnesota for criminal sexual conduct against his stepdaughters. He was sentenced to 40 years in prison in North Dakota and 90 months in prison in Minnesota consecutive to the North Dakota sentence. In this appeal, Lyons argues that he is entitled to 315 days of custody credit against his Minnesota sentence for time he spent in custody in Minnesota in 2018 and 2019 because he was in custody in connection with the offense being sentenced. We are not persuaded.

A defendant bears the burden of establishing that they are entitled to credit for time spent in custody. *State v. Roy*, 928 N.W.2d 341, 344 (Minn. 2019). A defendant is entitled to custody 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); *see also* Minn. Stat. § 609.145, subd. 2 (2018) ("A sentence of imprisonment upon conviction of a felony is reduced by the period of confinement of the defendant following the conviction and before the defendant's commitment to the commissioner of corrections for execution of sentence unless the court otherwise directs."). The district court does not have discretion on whether to award custody credit. *State v. Johnson*, 744 N.W.2d 376, 379 (Minn. 2008); Minn. R. Crim. P. 27.03, subd. 4(B) (providing that such a "credit must be deducted from the

sentence and term of imprisonment and must include time spent in custody from a prior stay of imposition or execution of sentence”).

The Minnesota Rules of Criminal Procedure do not address jail credit for time served with respect to consecutive sentencing. Instead, the Minnesota Sentencing Guidelines address the issue, and our supreme court has recognized that the sentencing guidelines reflect caselaw on jail credit for consecutive sentences. *Townsend v. State*, 834 N.W.2d 736, 740 n.3 (Minn. 2013); Minn. Sent. Guidelines 3.C (Supp. 2013). When consecutive sentences are imposed, the sentencing guidelines preclude the application of jail credit to more than one sentence for two specific reasons. The first reason is to “avoid double credit” which occurs by applying jail credit to two separate sentences. Minn. Sent. Guidelines 3.C.2.b.; see *State v. Clarkin*, 817 N.W.2d 678, 685-86 (Minn. 2012). Where a defendant is sentenced to serve multiple sentences consecutively, “the court must apply the jail credit to the first sentence only.” Minn. Sent. Guidelines 3.C.2.b. The second reason jail credit is precluded is “[t]o avoid creating a concurrent sentence.” Minn. Sent. Guidelines 3.C.2.c. This occurs “when a current offense is sentenced consecutively to a prior offense for which the offender is already serving time in a prison or jail” and the district court “appl[ies] jail credit from the prior offense to the current offense.” *Id.*

A district court’s decision on whether to award custody 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.” *Johnson*, 744 N.W.2d at 379. We review the district court’s factual findings for clear error and questions of law, such as the interpretation of the rules of criminal procedure and the Minnesota Sentencing

Guidelines, de novo. *Roy*, 928 N.W.2d at 344; *State v. Scovel*, 916 N.W.2d 550, 554 (Minn. 2018).

Lyons bears the burden of establishing that he is entitled to jail credit for the time he spent in custody in Minnesota in 2018 and 2019. *See Roy*, 928 N.W.2d at 344. He satisfies the general requirement for establishing that he is entitled to jail credit, namely that he was in custody in connection with the offense being sentenced. Minn. R. Crim. P. 27.03, subd. 4(B). But Lyons fails to show how awarding him jail credit against his Minnesota sentence for the time that he was in custody would not result in receiving a “double credit” or “creating a concurrent sentence.” Minn. Sent. Guidelines 3.C.2.b., 3.C.2.c.

The record reflects that North Dakota credited Lyons’s time in custody in Minnesota in 2018 and 2019 against his North Dakota sentence, and Lyons does not dispute that fact. At the Minnesota sentencing hearing, Lyons’s counsel requested that any jail credit that Lyons received for his time in custody go toward his Minnesota sentence instead of his North Dakota sentence, but stated that

[i]f the [c]ourt denies that request and then we later find out that North Dakota for some reason wouldn’t be giving credit for the time that he’s been writted over here, then we would certainly intend to . . . make sure that he does get credit from one state or for the other for the time he’s been over here. . . . We’re not asking that he be—we understand that we’re not allowed to ask as per the plea agreement or anything else for any double counting of credit, but just rather want to make sure that he does get credit. And if for some reason there’s miscommunication between the two states on where the credit ought to handle.

In response, the state “agree[d] that Mr. Lyons is entitled to one day credit for each day he’s spent in custody.” The prosecutor then stated that he “did talk to . . . the Senior Probation Agent that did both the sentencing worksheet and the jail credit calculation” that morning with Lyons’s counsel in the prosecutor’s office, and the probation agent “contact[ed] North Dakota and confirmed that they are giving him credit.” The jail credit calculation was sent to the district court before the sentencing hearing and provided that, except for the eight days following Lyons’s initial arrest in North Dakota, “[a]ll other jail credit . . . is being applied to his ND sentence.” The state indicated as much in its briefing to the district court in response to Lyons’s motion for jail credit and in its brief to this court on appeal of the district court’s denial of that motion. Lyons did not dispute this fact on either occasion, even going so far as acknowledging “North Dakota correction’s award of credit.” Nor does Lyons point to anything in the record to support the proposition that North Dakota did not award him credit.

Because the record supports the fact that North Dakota credited the time that Lyons spent in custody in Minnesota in 2018 and 2019 against his North Dakota sentence, crediting that time against his Minnesota sentence would result in an improper “double credit” and “create a concurrent sentence” out of Lyons’s consecutive sentences. Minn. Sent. Guidelines 3.C.2.b., 3.C.2.c. If Lyons receives credit from both North Dakota and Minnesota against his respective sentence in each state, then he is receiving “double credit” for the time he was in custody in Minnesota in 2018. *See State v. Patricelli*, 357 N.W.2d 89, 94 (Minn. 1984) (stating that “if [the] defendant’s sentences were consecutive,” then “crediting the defendant for jail time against both sentences would give him an unfair

double credit”). Similarly, if Lyons receives credit against both sentences, then a concurrent sentence would be created out of his consecutive sentences because Lyons’s “current offense” (in Minnesota) was sentenced consecutively to his “prior offense” (in North Dakota) “for which [Lyons] is already serving time in a prison or jail,” and the district court would be “apply[ing] jail credit from the prior offense to the current offense.” *See* Minn. Sent. Guidelines 3.C.2.c. Thus, the district court did not err by determining that Lyons failed to satisfy his burden of establishing that he is entitled to jail credit for the time he spent in custody in Minnesota in 2018. *See Roy*, 928 N.W.2d at 344.

Affirmed.