

*This opinion is nonprecedential except as provided by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
A22-0296**

State of Minnesota,
Respondent,

vs.

Joshua James Jerde,
Appellant.

**Filed October 17, 2022
Affirmed
Wheelock, Judge**

Crow Wing County District Court
File No. 18-CR-20-1855

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

Donald F. Ryan, Crow Wing County Attorney, Kelsey Anne Hopps, Assistant County Attorney, Brainerd, Minnesota (for respondent)

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

Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and
Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant challenges his sentence following revocation of his probation, arguing that the district court erred by failing to award custody credit for time he spent in custody in Iowa. We affirm.

FACTS

Appellant Joshua James Jerde pleaded guilty to felony terroristic threats in Crow Wing County, Minnesota. At sentencing in August 2020, the district court granted Jerde a stay of the presumptive 27-month sentence and placed him on supervised probation for five years. Conditions of his probation included that he comply with the aftercare recommendations of his inpatient treatment program; enter a halfway house and successfully complete his stay there; remain law-abiding and display no assaultive, threatening, or disorderly behaviors; and remain in contact with his probation officer.

A probation violation was filed in November 2020, alleging that Jerde failed to complete aftercare and discharge recommendations, to enter the halfway house, and to remain in contact with probation. The district court issued a probation-violation warrant. Jerde was apprehended pursuant to the warrant, and he appeared in district court shortly thereafter. The district court scheduled a probation-violation hearing and released Jerde on the same probationary conditions as before, with the additional condition that he contact probation that day.

After his district court appearance on the probation-violation warrant but prior to the probation-violation hearing, Jerde was arrested in Dubuque County, Iowa, for felony second-degree criminal mischief after he destroyed property and threatened to kill individuals, including the same victim from his Minnesota terroristic-threats conviction. The probation officer filed an addendum to the probation-violation report. The district court then issued another probation-violation warrant.

Jerde was convicted in Iowa and incarcerated there for a total of 333 days prior to his extradition back to Crow Wing County on the warrant. Jerde filed a jail-credit memorandum seeking credit for 387 days, including the 333 days he served in Iowa on the criminal-mischief conviction.

The district court held a probation-violation hearing, at which Jerde admitted to the violations but requested a shorter sanction of probationary jail time to account for the time served in Iowa. The state asked that Jerde's stay of execution be revoked. The district court heard testimony from the probation officer and received the treatment-program discharge summary and chemical-use-assessment recommendations into evidence. Based on the information in the record, the district court denied Jerde's request to remain on probation, executed Jerde's 27-month sentence, and awarded Jerde 74 days of custody credit based on its determination that Jerde was not entitled to credit on his Minnesota offense for time served in Iowa.

Jerde appeals.

DECISION

When pronouncing a sentence, the district court must state the number of days spent in custody in connection with the offense and must deduct credit for that time from the sentence. Minn. R. Crim. P. 27.03, subd. 4(B); *State v. Clarkin*, 817 N.W.2d 678, 687 (Minn. 2012). The defendant bears the burden of establishing entitlement to jail credit for any specific period of time. *Clarkin*, 817 N.W.2d at 687.

The decision to award custody credit is not discretionary with the district court. *State v. Johnson*, 744 N.W.2d 376, 379 (Minn. 2008). "The district court's decision

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.” *State v. Roy*, 928 N.W.2d 341, 344 (Minn. 2019) (quotation omitted). We review the district court’s factual findings for clear error but review questions of law de novo. *Id.*

When determining whether custody credit applies, Minnesota courts “distinguish between intrajurisdictional custody (custody within Minnesota) and interjurisdictional custody (custody outside of Minnesota).” *Id.* at 345. The purpose of awarding credit for intrajurisdictional custody, or time in custody within Minnesota, is to avoid the following concerns: de facto conversion of a concurrent sentence into a consecutive sentence, indigent persons serving longer sentences due to the inability to post bail, irrelevant factors affecting the length of incarceration, and prosecutors manipulating charging dates to increase the length of incarceration. *Id.* While the question of intrajurisdictional custody credit requires that credit be evaluated in light of avoiding those four concerns, the question of interjurisdictional custody credit is governed by a different test. *Id.*

To determine whether custody is interjurisdictional custody for which a defendant can receive custody credit, Minnesota courts apply the “solely-in-connection-with test”—“a defendant can only receive credit for time spent in the custody of another jurisdiction if the time was served solely in connection with the Minnesota offense.” *Id.*; *see also State v. Willis*, 376 N.W.2d 427, 427 (Minn. 1985) (holding that a defendant charged with a crime in Minnesota and detained in another state at the request of Minnesota authorities is

not entitled to credit against a Minnesota sentence for time in custody in the other state unless the Minnesota charge was the sole reason the defendant was held by the other state).

Jerde argues that the current law applying the solely-in-connection-with test to interjurisdictional custody should be overruled and that he should receive custody credit for time served in Iowa because Minnesota law prefers multiple sentences to be served concurrently. We address each argument in turn.

I. The district court did not err by not awarding custody credit for the time Jerde served in Iowa because the Minnesota offense was not the sole reason that he was held in custody in Iowa.

Jerde first argues that he should receive custody credit for the time he served in Iowa because the solely-in-connection-with test should be overruled. Jerde does not claim that the time he was incarcerated in Iowa on a conviction for criminal mischief is connected with his offense of conviction in Minnesota or with the underlying behavioral incident. Rather, Jerde relies on the concurrence from *Roy*, which critiques the solely-in-connection-with test for its inconsistency with our courts' emphasis on proportionality and fundamental fairness in sentencing. *Roy*, 928 N.W.2d at 349 (Thissen, J., concurring).¹ Jerde points to the principles in the *Roy* concurrence to argue that we

¹ Jerde further directs us to a case that was recently before this court, *State v. Kurtenbach*, No. A21-0526 (Minn. App. Sept. 20, 2021) (*Kurtenbach I*), *rev. granted* (Minn. Nov. 24, 2021), *and order granting rev. vacated* (Minn. June 9, 2022), in which the Minnesota Supreme Court heard argument to determine whether the interjurisdictional custody-credit rule should be overruled. However, the order granting review was vacated, and the appeal was dismissed, on the basis that the petition for further review was improvidently granted. In a more recent appeal, the same appellant in *Kurtenbach I* unsuccessfully challenged the denial of his custody-credit request for time served on an unrelated offense in South Dakota. *See State v. Kurtenbach*, No. A21-1188 (Minn. App. July 18, 2022) (*Kurtenbach II*).

should overrule established law applying the solely-in-connection-with test to interjurisdictional custody-credit decisions.

Our court is bound by Minnesota Supreme Court precedent. *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018). Existing supreme court precedent is clear that the solely-in-connection-with test governs the application of interjurisdictional custody credit. *See Willis*, 376 N.W.2d at 428; *State v. Mattson*, 376 N.W.2d 413, 416 (Minn. 1985). In 2019, consistent with existing precedent, the supreme court in *Roy* reaffirmed the principle that a defendant may receive credit for time spent in custody in another jurisdiction only if the time served was solely in connection with the Minnesota offense. 928 N.W.2d at 345.

Jerde's reliance on the concurrence in *Roy* is unavailing because concurring opinions are not binding precedent on our court. *See Maryland v. Wilson*, 519 U.S. 408, 412-13 (1997); *Tapia v. Leslie*, 939 N.W.2d 320, 324 (Minn. App. 2020), *rev'd on other grounds*, 950 N.W.2d 59 (Minn. 2020). Because both this court and the district court must apply the existing law, we are bound by precedent to apply the solely-in-connection-with test for interjurisdictional custody-credit determinations, and Jerde's argument that the district court erred fails.

II. The district court did not err in not awarding Jerde credit for time spent in custody in Iowa because the preference that multiple sentences be served concurrently under Minnesota law does not apply to interjurisdictional custody not solely in connection with a Minnesota offense.

Jerde next argues that custody credit should be awarded for the time he served in Iowa because Minnesota law includes a preference that multiple sentences be served concurrently. *See Minn. Sent'g Guidelines 2.F* (Supp. 2021) ("Generally, when an

offender is convicted of multiple current offenses, or when there is a prior felony sentence that has not expired or been discharged, concurrent sentencing is presumptive.”). In so arguing, Jerde cites to *Clarkin* for the proposition that jail credit is awarded for time spent in custody on convictions that would be sentenced concurrently. 817 N.W.2d at 685. The court in *Clarkin* was focused on avoiding the potential concerns that arise when evaluating *intra-jurisdictional* custody credit, *id.*, but, as established in *Roy*, appellate courts do not review those same concerns in questions of *inter-jurisdictional* custody credit, *Roy*, 928 N.W.2d at 345. *Clarkin* does not apply here because the custody in *Clarkin* was intra-jurisdictional, not inter-jurisdictional. 817 N.W.2d at 681-84.

Jerde also points to instances in which Minnesota sentences have been permitted to run concurrently with out-of-state sentences, citing both *State v. Wakefield*, 263 N.W.2d 76, 77-78 (Minn. 1978), and *State v. Jennings*, 448 N.W.2d 374, 375 (Minn. App. 1989). Neither *Wakefield* nor *Jennings* involves custody credit, however. Rather, in *Jennings*, the defendant demanded execution and concurrent service of a stayed Minnesota sentence while in custody in California on an unrelated offense, not custody credit against a Minnesota sentence for time spent in out-of-state custody on an unrelated offense. Similarly, in *Wakefield*, a Minnesota sentence was imposed while the defendant was serving a federal sentence.²

² “We do not find *Wakefield* persuasive because *Wakefield* is not a custody credit case. It involved the related, but separate issue, of concurrent versus consecutive sentencing.” *Roy*, 928 N.W.2d at 346. The supreme court in *Roy* also notes that when, as here, the defendant is being sentenced after having been released from custody in another jurisdiction, the district court has no option of applying the preference for concurrent sentencing as there is

Here, *Roy* is dispositive on the issue of custody credit for time served interjurisdictionally on an unrelated offense, and because it is factually on point, *Roy* controls. In *Roy*, the district court declined to grant custody credit for time the defendant served in the Red Lake Detention Center on an interjurisdictional Red Lake Tribal Court conviction while on probation for a Minnesota offense for which the stay was revoked, and on appeal, the solely-in-connection-with test was applied to affirm the district court's decision. *Roy*, 928 N.W.2d at 344. Because “a defendant can only receive credit for time spent in the custody of another jurisdiction if the time was served solely in connection with the Minnesota offense,” we conclude that the district court's determination here, as in *Roy*, should be affirmed. *Id.* at 345.

Finally, Jerde notes that in *Jennings*, we concluded that the preference for concurrent sentencing exists in a multistate context when the other jurisdiction has expressed a preference for concurrent sentencing of interjurisdictional offenses. 448 N.W.2d at 375. While distinguishable because it does not address custody credit, *Jennings* further differs from the instant case because the out-of-state sentence was imposed by California rather than Iowa. *Id.* Iowa law does not appear to express a preference for concurrent sentencing, either inter- or intrajurisdictionally. Iowa Code § 901.8 (2021) (“If a person is sentenced for two or more separate offenses, the sentencing judge may order the second or further sentence to begin at the expiration of the first or succeeding sentence.”); Iowa Code § 901.10A (2021) (“The new sentence of imprisonment

no additional current offense with which the other sentence can be made concurrent. *Id.* at 347.

for conviction of an aggravated misdemeanor shall be served consecutively with the term imposed for the parole violation, unless a concurrent term of imprisonment is ordered by the court.”); *see also State v. Hill*, 878 N.W.2d 269, 274 (Iowa 2016) (stating consecutive sentences in parole-revocation sentencing are the default option and presumed under Iowa Code § 901.10(A)).

Jerde’s argument is inconsistent with applicable law. Therefore, the district court did not err when executing Jerde’s stayed sentence without applying credit for time he served in Iowa for an offense unrelated to his Minnesota offense.

Affirmed.