

*This opinion is nonprecedential except as provided by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
A22-1121**

Ryan Thomas Dorry, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 6, 2023
Affirmed
Johnson, Judge**

St. Louis County District Court
File No. 69HI-CR-20-963

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer L. Lauermann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Kimberly J. Maki, St. Louis County Attorney, Jeffrey Vlatkovich, Assistant County Attorney, Hibbing, Minnesota (for respondent)

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

NONPRECEDENTIAL OPINION

JOHNSON, Judge

In 2021, Ryan Thomas Dorry pleaded guilty to domestic assault and was sentenced to 30 months of imprisonment, with 227 days of custody credit. In 2022, Dorry moved to correct his sentence by seeking an additional 44 days of custody credit for time he spent in

a residential treatment program between his guilty plea and his sentencing hearing. The district court denied the motion. We conclude that the district court did not clearly err in its findings of fact and did not err as a matter of law by concluding that the residential treatment program was not the functional equivalent of a jail, a workhouse, or a regional correctional facility. Therefore, we affirm.

FACTS

In December 2020, the state charged Dorry with two counts of felony domestic assault, in violation of Minn. Stat. § 609.2242, subd. 1(1) and 1(2) (2020). The state alleged in the complaint that Dorry punched his former girlfriend in the face approximately five times. Dorry was detained pending trial.

In May 2021, the state and Dorry entered into a plea agreement. Dorry pleaded guilty to one of the two charges, and the state dismissed the other charge. The parties also agreed that sentencing would be deferred and that, when the opportunity arose, Dorry could be placed on intensive pre-trial release so that he could participate in the Port Rehabilitation residential treatment program sponsored by the Duluth Bethel organization. The district court stated that it would approve the agreed-upon pre-trial release upon being presented with a signed pre-trial release agreement.

On June 21, 2021, Dorry and a probation officer signed an agreement that required Dorry to, among other things, “enter and successfully complete treatment @ Duluth Bethel and . . . return to jail upon completion of the phase 1 program.” The district court approved the agreement and ordered Dorry’s release.

Dorry began participating in the residential treatment program on the following day. On August 5, 2021, he was discharged from the program because he was found in a female patient's room, in violation of program policy. The district court revoked his pre-trial release and issued a warrant for his arrest, and he was taken into custody that same day. In September 2021, the district court imposed a sentence of 30 months of imprisonment, with 227 days of custody credit.

In April 2022, Dorry filed a motion to correct his sentence pursuant to rule 27.03, subdivision 9, of the rules of criminal procedure. He sought an additional 44 days of custody credit for the time he spent in the Port Rehabilitation residential treatment program. In a memorandum of law, Dorry argued that, because of COVID-19 protocols in place while he was there, the conditions of the Port Rehabilitation program were functionally equivalent to those of a jail, a workhouse, or a regional correctional facility. In an accompanying affidavit, Dorry stated that the Port Rehabilitation facility had security cameras, that he was awakened at 6:30 a.m. on weekdays and was required to turn out his lights at 10:00 p.m., that staff did daily rounds to check on patients, that he was not allowed to have visitors, and that patients were served meals at scheduled times. Dorry also submitted exhibits consisting of documents printed from the Duluth Bethel website concerning the Port Rehabilitation program and its response to the COVID-19 pandemic. The state opposed Dorry's motion and submitted an affidavit of the Port Rehabilitation program director, who stated that the facility is not locked, unlike a work-release program, and that patients "are able to leave at any time if they choose to abscond."

In May 2022, the district court held a short hearing, at which Dorry briefly testified. In June 2022, the district court denied Dorry’s motion in a five-page order, which included findings of fact and conclusions of law. Dorry appeals.

DECISION

Dorry argues that the district court erred by denying his motion for an additional 44 days of custody credit for the time he spent in the Port Rehabilitation residential treatment program.

“A criminal defendant is entitled to custody credit for time spent in custody in connection with the offense or behavioral incident being sentenced.” *State v. Roy*, 928 N.W.2d 341, 345 (Minn. 2019) (quotation omitted). This entitlement is based on a rule of criminal procedure, which states that, in pronouncing a sentence, a district court must “[s]tate the number of days” that the defendant has “spent in custody in connection with the offense or behavioral incident being sentenced” and must ensure that the same number of days is “deducted from the sentence and term of imprisonment” that is imposed. Minn. R. Crim. P. 27.03, subd. 4(B).

In addition, as a matter of “fairness and equity,” a defendant is entitled to custody credit for time spent in a residential treatment facility if “the level of confinement and limitations imposed are the functional equivalent of those imposed at a jail, workhouse, or regional correctional facility.” *Asfaha v. State*, 665 N.W.2d 523, 528 (Minn. 2003). This principle originally was based on sentencing guidelines. *See id.* at 526 (citing Minn. Sent’g Guidelines III.C.3 & cmt. III.C.04 (2002)). The supreme court continues to apply the

Asfaha rule without reference to sentencing guidelines. *See State v. Johnson*, 744 N.W.2d 376, 379-80 (Minn. 2008).

To determine whether the *Asfaha* standard is satisfied, a district court “must look closely at the facts of the case.” *Asfaha*, 665 N.W.2d at 528. “The defendant bears the burden of establishing an entitlement to” custody credit. *Johnson*, 744 N.W.2d at 379; *see also Roy*, 928 N.W.2d at 344. This court applies a clear-error standard of review to a district court’s findings of fact concerning the defendant’s circumstances and a *de novo* standard of review to the district court’s legal conclusion as to whether the defendant is entitled to custody credit. *Roy*, 928 N.W.2d at 344; *Johnson*, 744 N.W.2d at 379.

In this case, the district court made findings of fact that correspond to the affidavit of the Port Rehabilitation program director. The district court also found, based on Dorry’s testimony, that he “was free to move around the treatment facility and that his room was not locked.” The district court concluded that the Port Rehabilitation facility “is not the functional equivalent of a jail, a workhouse, or a regional correctional facility.”

Dorry contends that the district court erred on the grounds that the Port Rehabilitation residential treatment program is similar to a workhouse and that the program’s COVID-19 protocols imposed an enhanced level of restraint. The evidence does not support Dorry’s contention. Dorry’s exhibits describe the Port Rehabilitation program as one that provides “independent living in a supportive environment” in a “halfway house home.” In contrast, the exhibits describe Duluth Bethel’s community-corrections work-release program as “a minimum-security adult detention center.” The program director stated in her affidavit that the Port Rehabilitation program “is a separate program from”

Duluth Bethel’s work-release program, which is in “a lock down facility,” while the Port Rehabilitation program “is not in a locked facility.”

In addition, Dorry did not introduce detailed evidence of COVID-19 protocols that were in effect at the Port Rehabilitation program at the time of his residence there. Dorry’s affidavit states generally that the program “was more restrictive than during normal times” but does not elaborate. Dorry submitted an undated exhibit stating that Duluth Bethel “has taken significant steps . . . to reduce the spread of coronavirus and COVID-19.” But the document does not give specifics and does not describe any particular protocols that would tend to create an atmosphere akin to a jail, a workhouse, or a regional correctional facility.

Dorry urges this court to reach the same result as in *Asfaha*. In that case, the appellant spent time in a treatment program for juveniles with “severe conduct disorder[s].” 665 N.W.2d at 524. The district court found that the program’s facility had extensive security features, such as a “central control booth” that controlled access to all the doors in the facility, bars that lined the facility’s windows, fencing that surrounded the exercise area, staff who consistently monitored cameras placed throughout the facility, and mechanical restraints that were placed on residents when they left the facility. *Id.* at 527. The supreme court concluded that the appellant was entitled to custody credit because the facility imposed “essentially the same limitations on a person’s freedom as a jail, workhouse, or regional correctional facility.” *Id.*

The facts of this case are different from the facts of *Asfaha*. The Port Rehabilitation program does not operate in a locked facility. Dorry’s affidavit describes a regimented daily schedule, but he does not state that his movement was limited by physical barriers or

security personnel. It appears that the Port Rehabilitation facility is more like the facility in *State v. Fields*, 679 N.W.2d 341 (Minn. 2004). The appellant in that case had spent time at the Glen Mills residential treatment facility, which the district court described as “an excellent program” and “a structured residential treatment program” but one that was “not incarceration.” *Id.* at 349. The supreme court agreed and concluded that the appellant was not entitled to custody credit. *Id.*

Dorry also contends that, even though the Port Rehabilitation program was not in a locked facility, the terms of his court-ordered pre-trial release effectively prohibited him from leaving the Port Rehabilitation facility because he would have been charged with the criminal offense of escape from custody. This contention fails for at least two reasons. First, the applicable caselaw focuses on “the level of confinement and limitations imposed” on a defendant, not the consequences that might be imposed if the defendant were to leave a treatment facility. *See, e.g., Asfaha*, 665 N.W.2d at 528. Second, Dorry has not shown that he necessarily would have committed a crime if he had left the Port Rehabilitation facility. A person commits the crime of escape from custody if he “depart[s] without lawful authority *and fail[s] to return to custody* following temporary leave granted for a specific purpose or limited period.” Minn. Stat. § 609.485, subd. 1 (2022) (emphasis added). It appears that Dorry would not have committed a crime if he had left the Port Rehabilitation facility and had gone directly to the county jail. *See State v. Headbird*, 375 N.W.2d 90, 91-93 (Minn. App. 1985) (affirming escape conviction for not returning to county jail or halfway house after discharge from treatment facility), *rev. denied* (Minn. Dec. 13, 1985).

Thus, the district court did not clearly err in its findings of fact and did not err in its legal conclusion that the Port Rehabilitation facility is not the functional equivalent of a jail, a workhouse, or a regional correctional facility. Dorry is not entitled to an additional 44 days of custody credit. Therefore, the district court did not err by denying Dorry's motion for correction of his sentence.

Affirmed.