

*This opinion is nonprecedential except as provided by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
A23-0114**

State of Minnesota,
Respondent,

vs.

Terry Wayne Watts,
Appellant.

**Filed February 24, 2025
Affirmed in part, reversed in part, and remanded
Reyes, Judge**

Polk County District Court
File No. 60-CR-14-366

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

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

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

Considered and decided by Larson, Presiding Judge; Reyes, Judge; and Bratvold,
Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues that the postconviction court erred when it denied him (1) custody credit for jail time he served in California after he pleaded guilty but before his sentencing in Minnesota and (2) relief for the seven-year delay between his guilty plea and sentencing

in violation of his due-process rights. We affirm on the first issue but reverse and remand on the second issue because the findings are insufficient to permit appellate review.

FACTS

Respondent State of Minnesota charged appellant Terry Wayne Watts with drug-related offenses in Polk County in 2014. Under a negotiated plea deal, appellant pleaded guilty to first-degree controlled-substance sale in violation of Minn. Stat. § 152.021, subd. 1(1) (2012), on May 22, 2015, and the state dismissed the other charges. The district court placed appellant on conditional release until his scheduled sentencing hearing in August 2015 but allowed him to visit family in California.

While in California, authorities arrested and charged appellant with multiple felonies, including kidnapping and taking a vehicle without consent. Appellant pleaded guilty to his California charges under a plea agreement on August 3, 2015, only after being informed by the California Superior Court and attorneys that his California sentence would run concurrent to his Minnesota sentence. At his plea hearing in California, appellant's California counsel, the California prosecutor, and the California court all understood that Minnesota would honor this deal based on conversations the California attorneys had with appellant's Minnesota counsel, Jessen Alexander, and Polk County prosecutor Scott Buhler. Specifically, the California prosecutor confirmed in an email that he "ended up contacting Mr. Buhler because I was a little concerned that he made representations to me that he was not standing behind. He confirmed with me there was an agreement to run the [Minnesota and California] sentences concurrent and that he conceded this point in [appellant's] sentencing hearing." Separately, Alexander also confirmed with Buhler that

the Minnesota sentence would run concurrent to the California sentence and understood that Buhler would not seek additional jail time in Minnesota after appellant completed his California sentence. Based on these representations, appellant pleaded guilty, and on September 15, 2015, the California court sentenced him to 104 months in prison.

After appellant waived his right to be physically present at his Minnesota sentencing, Alexander coordinated with California authorities to get appellant on the phone for a sentencing hearing in the Minnesota case on or about June 8, 2016. The district court rescheduled the hearing because Buhler had childcare issues and needed to stay home. In an email to Alexander that same day, Buhler stated that he believed a 150-month Minnesota sentence, notably longer than appellant's 104-month California sentence, was appropriate for the Minnesota charges. While acknowledging that he agreed to give appellant credit for his California jail time, Buhler now stated that he did not agree that appellant would not have to spend any time in prison in Minnesota.

Alexander's representation of appellant ended on June 30, 2016, due to his transfer to a different office. In a case note, Alexander stated that "Buhler is playing games. He is now saying 150 months due to a breach of a plea agreement. All of my conversations with him about the number were that [appellant] would not be coming back to MN, he'd serve all his time in CA. Buhler has changed his mind it appears."

Attorney Eric Gudmundson was assigned to appellant's case but did not contact appellant until six months later, when he wrote appellant a letter introducing himself, informing him about an offer from the state for 150 months, and attaching the state's offer

letter.¹ Gudmundson informed appellant that, under the proposed deal, he would likely have to come back to Minnesota and serve about one year after his California release. Gudmundson noted that, if appellant did not want to take the offer, he would likely not be entitled to have any of the time he served in California apply to his Minnesota sentence. Appellant states in an affidavit that he decided to accept this offer to get credit for his California sentence and personally wrote a letter to Buhler indicating his acceptance but received no response.

In an order issued on June 4, 2017, the district court acknowledged that appellant wanted to be sentenced in absentia and noted several hearings it set to sentence or schedule sentencing between November 2015 and January 2017 that were ultimately unsuccessful because California did not make appellant available.² The district court administratively closed the case based on appellant's incarceration in California for the foreseeable future, issued a body-only warrant for appellant, and discharged Gudmundson and the State Public Defender's Office from its obligations to represent appellant. As a result, appellant continued to serve his prison sentence in California without representation in Minnesota.

In May 2021, appellant sent a letter to the district court requesting that he be sentenced according to the terms of the 2015 plea agreement. Appellant received no response from the district court. In November 2021, appellant hired a private attorney,

¹ The only offer letter in the record before this court is the original plea agreement from May 2015. The discussed second offer letter is nowhere in the record.

² Appellant states that he did not receive notices for any of his hearings in Minnesota during this time and believes that the documents were not sent to him through the proper procedure for California prisons.

Challis Williams, to represent him. On January 6, 2022, Williams moved for appellant to be sentenced via Zoom while he continued to be incarcerated in California. He received no response from the district court. Appellant again sent a letter to the district court requesting to be sentenced in early March 2022. Appellant again received no response. Appellant finished serving his California prison sentence on March 29, 2022, and was extradited to Minnesota where he was eventually released on bail with conditions pending sentencing.

The district court finally sentenced appellant in Minnesota on October 25, 2022, seven years after his California sentencing. Appellant moved for a downward dispositional departure and requested credit for his California jail time. The state opposed appellant's jail-credit request because of his admission that he used heroin in prison in California until he obtained sobriety in 2017. Buhler admitted that he had discussions with the California attorneys about giving appellant credit for time served there and admitted that he did not object to this agreement, despite appellant's initial breach of the plea agreement by incurring charges in California. However, Buhler now argued that appellant's heroin use in prison negated any such agreement. The state argued for an 81-month sentence with no credit for appellant's custody time in California.³ The district court denied appellant's departure motion. As a result, appellant agreed to this sentence.⁴ The district court

³ The Drug Sentencing Reform Act (DSRA) of 2016 entitled appellant to a sentence reduction.

⁴ Contrary to the state's contentions, appellant raised the jail-credit issue below, and so it is properly before this court on appeal.

sentenced appellant to 81 months in prison with jail credit only for his time in custody in Minnesota.

Appellant petitioned for postconviction relief on July 3, 2023, arguing that the Minnesota and California sentences should have run concurrently and that the seven-year sentencing delay violated his due-process rights. The postconviction court scheduled, then cancelled, an evidentiary hearing. Ten months later, on May 6, 2024, the postconviction court denied appellant's petition for relief, determining that appellant was not entitled to jail credit for time served in California, that appellant's rights were not violated, and that he was "treated more than fairly." This appeal follows.

DECISION

I. The postconviction court did not err by declining to award appellant custody credit for the time he served in California toward his Minnesota sentence.

Appellant argues that, even though he is seeking credit from his California sentence to count toward his current Minnesota sentence, the postconviction court erred by applying *State v. Roy*, 928 N.W.2d 341, 344 (Minn. 2019), and Minn. R. Crim. P. 27.03, subd. 4(B), because this is not a custody-credit issue but instead is an issue of whether his two sentences should run concurrently. Appellant argues alternatively that, "[t]o the extent Minn. R. Crim. P. 27.03, subd. 4(B), applies here, its interjurisdictional custody rule must be modified or overruled." We disagree.

It is the defendant's burden to establish that they are entitled to credit for time spent in custody during a criminal proceeding. *State v. Johnson*, 744 N.W.2d 376, 377 (Minn. 2008); *Roy*, 928 N.W.2d at 344. A defendant's entitlement to jail credit is not up to the

district court's discretion. Minn. R. Crim. P. 27.03, subd. 4(B); *Roy*, 928 N.W.2d at 344; *State v. Parr*, 414 N.W.2d 776, 778 (Minn. App. 1987), *rev. denied* (Minn. Jan. 15, 1988). “A district court’s decision whether to award 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. Appellate courts review a district court’s factual findings for clear error but review de novo “questions of law, such as the interpretation of the rules of criminal procedure.” *Roy*, 928 N.W.2d at 344.

“When determining whether to award custody credit, we distinguish between intrajurisdictional custody (custody within Minnesota) and interjurisdictional custody (custody outside of Minnesota).” *Id.* at 345. Courts look to avoid four potential concerns with respect to intrajurisdictional custody: “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.” *Id.* (citation omitted). By contrast, “[f]or a defendant to receive credit on a Minnesota sentence for time spent in another jurisdiction’s custody, the defendant’s Minnesota offense must be ‘the *sole reason*’ for the custody.” *Id.* (quotations omitted) (emphasis added); *see also Parr*, 414 N.W.2d at 779.

Here, appellant seeks credit toward his Minnesota sentence for the time he spent in custody in California on a non-Minnesota crime. As a result, the interjurisdictional rule applies. *See Roy*, 928 N.W.2d at 345. Under this test, appellant can receive credit only for

the time he served in California that is solely in connection with his Minnesota offense. *Id.* (citation omitted). Because appellant’s Minnesota offense is not “the sole reason” for his custody in California, he is not entitled to credit for that time. *Id.* (citations omitted).

Appellant raises several arguments as to why the postconviction court erred by applying *Roy* and the interjurisdictional rule.

Appellant first argues that *Roy* and the interjurisdictional rule do not apply because Minnesota Sentencing Guidelines 2.F (2022) assumes that sentences should run concurrently. Appellant also argues that the sentencing guidelines bar “de facto consecutive” sentences. But for the concurrent versus consecutive sentencing distinction to be relevant, there must be multiple sentences being served at the same time.⁵ *See Roy*, 928 N.W.2d at 347 (“In order for a sentence to be concurrent or consecutive, the defendant must be subject to another sentence at the time the court imposes the second sentence.” (citing Minn. Stat. § 609.15, subd. 1(a) (2018))). Here, just like the defendant in *Roy*, appellant had been released from his California sentence before he began serving his Minnesota sentence. *See id.* (noting *Roy* had no concurrent sentences because she had been released from Red Lake Detention Center when sentenced in Minnesota district court). As a result, when the district court sentenced appellant in Minnesota, he had no other active sentence and could not serve his Minnesota sentence concurrent to anything else.

⁵ *See State v. Jones*, 848 N.W.2d 528, 537 n.5 (Minn. 2014) (“A consecutive sentence is one which does not begin to run until the expiration of the term of the prior sentence. By contrast, concurrent sentences are served simultaneously.” (quotations omitted)).

Appellant’s reliance on *State v. Wakefield*, 263 N.W.2d 76 (Minn. 1978), for the argument that his sentence is presumptively concurrent is similarly misguided. The supreme court addressed this argument in *Roy*, when Roy argued that caselaw supports awarding credit against a Minnesota sentence “for time that a defendant spent in custody in connection with another jurisdiction’s charges if both jurisdictions prefer concurrent sentencing and neither says a sentence is to be run consecutive.” *Roy*, 928 N.W.2d at 346 (quotation marks omitted). The supreme court noted that “*Wakefield* [is not] persuasive because *Wakefield* is not a custody credit case. It involved the related, but separate issue, of concurrent versus consecutive sentencing.” *Id.* The defendant in *Wakefield* had a second sentence imposed in Minnesota “while he was serving another sentence” outside of Minnesota. *Id.* Further, “*Wakefield* did not address what custody credit the defendant should have received for any time he spent in federal custody before receiving his Minnesota sentence.” *Id.* Despite appellant’s argument, this is not a *Wakefield* case because his California prison sentence ended in March 2022 before he was sentenced in Minnesota in October 2022. For the same reason, appellant’s reliance on *State v. Jennings*, 448 N.W.2d 374 (Minn. App. 1989), which is also not a jail-credit case, but is about consecutive sentences and a defendant’s demand for execution of a stayed sentence, is equally unavailing.

Appellant cites to *State v. Bauman*, 388 N.W.2d 795 (Minn. App. 1986) to argue that his “subsequent Minnesota sentence was concurrent to his unexpired sentence from [California]” and that “the rule against de facto consecutive sentences applies in the interjurisdictional context.” Appellant’s argument fails for two reasons.

First, *Bauman* is factually distinguishable. Importantly, Bauman had two active prison sentences at the same time. *Id.* at 796. Here, appellant finished serving his California prison sentence before being sentenced on his Minnesota offense. His Minnesota sentence was indeed subsequent to his California sentence, but not concurrent to it.

Second, *Bauman* did not address, much less apply, the interjurisdictional rule as required under *Roy*. Moreover, the supreme court in *Roy* considered and rejected the arguments that appellant now makes. Roy, just like appellant, argued that “denying her credit for the time she served in [another jurisdiction] would transform her sentences into de facto consecutive sentences and would increase the length of her incarceration based on irrelevant factors that are subject to manipulation.” *Roy*, 928 N.W.2d at 346. The supreme court noted that “these are factors we consider when we apply the intrajurisdictional custody credit rule, not the interjurisdictional rule” and declined to consider them. *Id.*

Finally, appellant argues that, even if the interjurisdictional rule and *Roy* apply, we should modify or overrule it. But this court is bound by Minnesota Supreme Court precedent. *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018).

Because appellant’s other sentence was served in California and falls under the interjurisdictional custody-credit rule, and because appellant’s California charges were unrelated to his Minnesota offense, we discern no error by the postconviction court’s determination that appellant was not entitled to custody credit for the time he spent in prison in California.

II. The postconviction court did not make sufficient findings to allow appellate review as to whether the seven-year delay between appellant’s guilty plea and sentencing violated his due-process rights.

Appellant argues that the seven-year delay between his plea hearing and sentencing hearing violated his due-process rights and requests immediate release from custody and any other appropriate relief. Because the postconviction court did not make sufficient findings on this issue that appellant properly raised and argued before it, we reverse and remand.

“[A]n undecided question is not usually amenable to appellate review.” *Hoyt Inv. Co. v. Bloomington Commerce & Trade Ctr. Assocs.*, 418 N.W.2d 173, 175 (Minn. 1988); *see also Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally address only those questions previously presented to and *considered by* lower court). The postconviction court must make findings and determinations to allow appellate review, but when “the reviewing court cannot ascertain whether the postconviction court actually considered one of the petitioner’s claims, remand is appropriate.” *Walters v. State*, 14 N.W.3d 279, 282-83 (Minn. 2024) (quotation omitted).

Appellant acknowledges that Minnesota, unlike other states, does not have a rule or statute requiring sentencing to occur within a certain time after an adjudication of guilt. *See Betterman v. Montana*, 578 U.S. 437, 447 nn.10-11 (2016) (identifying states with rules and statutes that provide for speedy sentencing). Appellant relies on the United States Supreme Court’s decision in *Betterman*, as well as other federal cases, to support his due-process argument. In *Betterman*, the Supreme Court held that a defendant’s Sixth Amendment speedy-trial right does not apply once a defendant is found guilty at trial or

pleads guilty to criminal charges. *Id.* at 439. However, in dicta, the Supreme Court stated that “[f]or [an] inordinate delay in sentencing . . . a defendant may have other recourse, including, in appropriate circumstances, tailored relief under the Due Process Clause[.]” *Id.* at 439. In a footnote, the Supreme Court highlighted that relevant considerations for a due-process violation “may include the length of and reasons for delay, the defendant’s diligence in requesting expeditious sentencing, and prejudice.” *Id.* at 448 n.12. As Justices Sotomayor and Thomas highlighted in their concurrences, the Supreme Court was not being asked to decide, and did not decide, whether there is a due-process right to a speedy sentencing. *See Betterman v. Montana*, 578 U.S. 437, 449 (2016) (Thomas, J., concurring) (“We have never decided whether the Due Process Clause creates an entitlement to a reasonably prompt sentencing hearing. Today’s opinion leaves us free to decide the proper analytical framework to analyze such claims if and when the issue is properly before us.”); *Betterman v. Montana*, 578 U.S. 437, 450-51 (2016) (Sotomayor, J., concurring) (“The Court has no reason to consider today the appropriate test for such a Due Process Clause challenge . . . the question is an open one,” and “[i]n the appropriate case, I would thus consider [the *Barker* test] the correct test for a Due Process Clause delayed sentencing challenge.”).

Appellant argues for application of the factors that the Supreme Court highlighted in *Betterman*: (1) length of delay; (2) reason for delay; (3) defendant’s assertion of his right; and (4) prejudice to defendant. *See* 578 U.S. at 448 n.12; *see also Barker v. Wingo*,

407 U.S. 514, 530-31 (1972).⁶ However, we cannot review appellant’s argument because the postconviction court did not make sufficient findings on this issue to enable us to do so. *See Hoyt Inv. Co.*, 418 N.W.2d at 175; *Waiters*, 14 N.W.3d at 282-83. The only reference by the postconviction court to appellant’s due-process argument is that it “identifies no violations of the state or federal constitutions” or “relevant rules, statutes[,] or case law.” We cannot ascertain whether the postconviction court “actually considered” appellant’s due-process argument because the findings and determinations on this issue are cursory at best. Further, it cancelled a scheduled evidentiary hearing, so there is no transcript to review. *But see* Minn. Stat. § 590.04, subd. 1 (2024) (“Unless the [postconviction] petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief, the court *shall promptly set an early hearing* on the petition.” (emphasis added)). We therefore reverse and remand to the postconviction court to consider and make findings regarding appellant’s argument and, if necessary, to hold an evidentiary hearing on the issue.

Affirmed in part, reversed in part, and remanded.

⁶ Since *Betterman*, several federal and state courts have found a due-process right to speedy sentencing, with some applying the *Barker* factors. *See, e.g., United States v. Brown*, 709 F. App’x 103, 103-04 (2d Cir. 2018); *United States v. Lacerda*, 958 F.3d 196, 219-20 (3d Cir. 2020); *United States v. Yupa Yupa*, 796 F. App’x 297, 299 (7th Cir. 2019); *State v. Canosa*, 523 P.3d 1059, 1070 (Haw. 2023); *State v. Lopez*, 410 P.3d 226, 233 (N.M. Ct. App. 2017); *State v. Clawson*, 421 P.3d 269, 272 (Mont. 2018).