

*This opinion is nonprecedential except as provided by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
A24-0734**

State of Minnesota,
Appellant,

vs.

Devin Dion Tillman,
Respondent.

**Filed January 21, 2025
Reversed and remanded
Cochran, Judge**

Blue Earth County District Court
File No. 07-CR-21-700

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Considered and decided by Slieter, Presiding Judge; Cochran, Judge; and
Cleary, Judge.*

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

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this sentencing appeal, appellant State of Minnesota challenges the district court's calculation of jail credit used in sentencing respondent Devon Dion Tillman. The state argues that the district court erred when it awarded jail credit for time served in another jurisdiction. Because the district court did not apply the existing interjurisdictional custody rule on jail credit, we reverse and remand for resentencing.

FACTS

The following facts are not in dispute. In March 2021, the state arrested and charged Tillman with (1) first-degree aggravated robbery; (2) second-degree assault; (3) theft of movable property; (4) theft of a motor vehicle; (5) fleeing a peace officer in a motor vehicle; and (6) fleeing a peace officer by other means. After posting bond, Tillman was released from jail subject to conditions including that he remain law-abiding.

A year later, in March 2022, Tillman entered into a plea agreement with the state. Consistent with the agreement, Tillman pleaded guilty to two of the charges (second-degree assault and fleeing a peace officer), and the state dismissed the remaining charges. The district court accepted Tillman's guilty pleas, ordered a presentence investigation (PSI), and set a sentencing hearing for May 23, 2022. The district court also placed Tillman on conditional release pending sentencing.

The PSI revealed that Tillman had pending charges in Illinois. The PSI also noted that a conditional-release-violation report was filed in Minnesota as a result of the Illinois charges. The probation department recommended that Tillman be sentenced to 36 months'

imprisonment for the second-degree assault charge. And for the charge of fleeing a peace officer, probation recommended that Tillman be sentenced to 12 months and one day's imprisonment but receive a stay of execution with supervised probation or a concurrent sentence.

Tillman did not appear at his scheduled sentencing hearing on May 23, 2022, and the district court issued a warrant for his arrest. In or around late January to early February 2023, Tillman was arrested in Illinois. On February 2, 2023, Tillman signed a waiver of extradition in which he agreed to return to Minnesota to address his Minnesota charges. However, Tillman remained in custody in Illinois on his Illinois charges until March 22, 2024.

On March 25, 2024, a little more than one year after his arrest in Illinois, Tillman appeared in district court in Minnesota. The district court appointed a public defender and ordered that Tillman be held without bail. Two days later, on March 27, 2024, the district court sentenced Tillman on his Minnesota charges.

At the sentencing hearing, the district court heard from the parties on the issue of jail credit. The state argued that Tillman was entitled to ten days of jail credit for time served, which included four days for time served in Minnesota before being conditionally released in 2021 and six days for the time between the completion of his Illinois sentence and his sentencing on the Minnesota charges. The state further argued that Tillman was not entitled to jail credit for any additional time served in Illinois because "jail credit is allowed for time spent in another state *only when* the Minnesota offense was the sole reason for incarceration [in the] foreign jurisdiction." (Emphasis added.)

Tillman argued that he was entitled to substantially more jail credit time—a total of 424 days. Tillman agreed with the state that he was entitled to four days of jail credit for time in custody in Minnesota prior to being conditionally released in March 2021. But Tillman maintained that he also was entitled to 420 days of jail credit for the time served after signing the waiver of extradition in Illinois on February 2, 2023, until his sentencing date in Minnesota on March 27, 2024. Of those days, 414 days were spent in custody in Illinois on his Illinois sentence, three days were spent in Illinois awaiting transfer to Minnesota, and three days were spent in Minnesota awaiting sentencing. Tillman argued that, once he signed the waiver of extradition, the state could have sought a transfer to Minnesota for sentencing but did not.

The district court was not convinced that the waiver of extradition entitled Tillman to jail credit for time served in Illinois. However, the district court found that, once a warrant was issued for Tillman’s failure to appear at sentencing on May 23, 2022, Tillman would have been available for sentencing had he not already “been in custody in the State of Illinois.” On that basis, the district court determined “any time spent in custody after May 23 of 2022 is a direct result” of his failing to appear on the Minnesota charges and awarded Tillman a total of 424 days of jail credit toward his sentence.

The state appeals.

DECISION

The state challenges the district court’s determination of jail credit, arguing that the district court erred by granting Tillman jail credit for time spent in custody in Illinois on Illinois charges in contravention of the supreme court’s interjurisdictional custody rule.

Because the district court did not follow binding supreme court precedent, we agree with the state.

I. The district court erred as a matter of law when it awarded Tillman jail credit for time served in Illinois when he was in custody on his Illinois charges.

“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) (quoting Minn. R. Crim. P. 27.03, subd. 4(B)). The defendant bears “the burden of establishing that he is entitled to jail credit for any specific period of time.” *State v. Clarkin*, 817 N.W.2d 678, 687 (Minn. 2012). If the defendant establishes that he is entitled to jail credit, the district court does not have discretion regarding whether to award jail credit. *State v. Johnson*, 744 N.W.2d 376, 379 (Minn. 2008). The decision to award jail credit presents a mixed question of law and fact because the district court “must determine the circumstances of the custody the defendant seeks credit for, and then apply the rules to those circumstances.” *Id.* We will not reverse a district court’s factual findings absent a clear error, but we interpret the rules of criminal procedure de novo. *Id.*

For many years, our supreme court has distinguished between time spent in custody in Minnesota (intra-jurisdictional) and time spent in custody in another jurisdiction (inter-jurisdictional) for purposes of awarding jail credit under rule 27.03, subdivision 4. Compare *State v. Patricelli*, 357 N.W.2d 89, 94 (Minn. 1984) (granting jail credit for time in custody in Minnesota on unrelated charges), with *State v. Bentley*, 329 N.W.2d 39, 40 (Minn. 1983) (noting that defendant is not entitled to jail credit for time in custody in North

Dakota on non-Minnesota charges). In 2019, the supreme court reaffirmed this distinction in *Roy*. 928 N.W.2d at 345. Regarding interjurisdictional credit, the supreme court stated that “[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.* (emphasis added) (quotation omitted). Thus, a defendant is not entitled to jail credit under rule 27.03 for time spent in custody in another jurisdiction on charges arising in a foreign jurisdiction. *Id.* at 345, 347 (holding that a defendant is not entitled to custody credit against her Minnesota sentence for time spent in custody in the Red Lake Nation).

Relying on the interjurisdictional jail credit rule, the state argues that the district court erred as a matter of law when it awarded Tillman over 400 days of jail credit for time spent in custody in Illinois on charges brought by the state of Illinois. The state maintains that the district court’s decision contravenes the supreme court’s rule on interjurisdictional jail credit. Tillman does not disagree. Instead, Tillman argues that this court’s decision in *State v. Bauman*, justifies the district court’s award of jail credit in this case. 388 N.W.2d 795 (Minn. App. 1986), *rev. denied* (Minn. Aug. 20, 1986). We consider each argument below and agree with the state.

In determining how much jail credit to award to Tillman, the district court referenced supreme court precedent governing jail credit for interjurisdictional custody but then did not apply the interjurisdictional rule. Instead, the district court used a different standard based on its own interpretation of the following language in rule 27.03, subdivision 4: “days spent in custody in connection with the offense.” The district court

reasoned that if Tillman had not been in custody in Illinois, he would have been available for the scheduled sentencing in Minnesota on May 23, 2022, and therefore any time in custody after that date was “a direct result” of his Minnesota offense and entitled him to jail credit for that time.

The district court erred as a matter of law in reaching this conclusion. As discussed above, the supreme court has held that, “[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.” *Roy*, 928 N.W.2d at 345 (emphasis added) (quotation omitted). And “[t]he district court, like this court, is bound by supreme court precedent.” *State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010), *rev. denied* (Minn. Sept. 21, 2010).

Here, there is no dispute that Tillman’s Minnesota offenses were not “the sole reason” that he was placed in custody in Illinois, but the district court nonetheless included Tillman’s time spent in custody on his Illinois charges when it granted Tillman a total of 424 days of jail credit. The 424 days of jail credit includes over 400 days for time spent in custody for his Illinois offenses. Specifically, Tillman was in custody on his Illinois offenses from February 2, 2023, until he completed his sentence on or about March 22, 2024, or 414 days. Under the current interjurisdictional rule, Tillman was not entitled to the full 424 days of jail credit awarded by the district court. Accordingly, the district court erred as a matter of law when it granted Tillman jail credit for time spent in custody in Illinois while he was in custody on the Illinois charges and not solely because of his Minnesota offenses. *See Roy*, 928 N.W.2d at 347.

Tillman argues that, notwithstanding the supreme court's 2019 decision in *Roy* regarding jail credit for interjurisdictional custody, this court's 1986 decision in *Bauman* justifies the district court's award of jail credit for Tillman's time spent in custody in Illinois on Illinois charges. We are not persuaded.

In *Bauman*, the state arrested Bauman after he sold a stolen outboard motor and immediately turned him over to federal law enforcement, who had previously indicted him on unrelated offenses. 388 N.W.2d at 795-96. As Bauman worked to resolve his federal charges, the state charged him with selling stolen property. *Id.* at 796. Despite continuously being in federal custody, the state did not arraign him on the state charges for almost two years. *Id.* Bauman then pleaded guilty to those charges, and the district court sentenced him to the presumptive prison sentence "to run concurrent with his remaining federal sentence." *Id.* The district court also awarded Bauman credit from the date defendant first requested adjudication on the state charges. *Id.* This court determined that the delay in arraignment amounted to "unfair and unjustifiable delay in criminal proceedings" and held Bauman was entitled to relief in the form of jail credit for time in federal custody since the date of arrest to prevent "what is, in effect, an unauthorized consecutive sentence." *Id.* at 797.

Tillman's reliance on *Bauman* is unavailing because *Bauman* is distinguishable. In *Bauman*, this court focused on the delay in criminal proceedings arising from the state failing to arraign the defendant for over two years after his arrest. *Id.* The state's delay in arraignment was the basis for awarding jail credit for time spent in custody on federal charges. *Id.* In this case, there was no delay in arraigning the defendant. Instead, Tillman

entered a guilty plea after he was charged, was placed on conditional release, and then failed to appear for his scheduled sentencing hearing. Unlike in *Bauman*, the delay in sentencing here was, in part, due to the defendant's own actions. Accordingly, *Bauman* is inapposite. More importantly, the supreme court's decision in *Roy* reaffirming the interjurisdictional rule governing jail credit controls the issue before us and supersedes *Bauman* to the extent that *Bauman* is inconsistent.¹

In sum, the district court erred as a matter of law when it granted Tillman jail credit toward his Minnesota sentence for time served in Illinois while he was in custody on Illinois charges.

II. Tillman's constitutional arguments raised for the first time on appeal are not properly before this court.

In the alternative, Tillman argues, for the first time on appeal, that this court should affirm the district court's decision notwithstanding *Roy* because denying him jail credit for time served while in custody in Illinois would violate his constitutional rights under the Equal Protection and Due Process Clauses of the United States Constitution. Appellate courts generally do not decide issues that were not raised before the district court, including constitutional issues. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). But "[a] respondent can raise alternative arguments on appeal in defense of the underlying decision when there are sufficient facts in the record for the appellate court to consider the

¹ Tillman's reliance on *State v. Folley* and *State v. Hadgu* is similarly unavailing. *State v. Folley* addressed only intrajurisdictional custody, 438 N.W.2d 372, 374-75 (Minn. 1989), and *State v. Hadgu* addressed a federal INS detainer, which this court distinguished as having a "non-penal purpose" and stated that the interjurisdictional rule on jail credit did not apply. 681 N.W.2d 30, 33 (Minn. App. 2004), *rev. denied* (Minn. Sept. 21, 2024).

alternative theories, there is legal support for the arguments, and the alternative grounds would not expand the relief previously granted.” *State v. Grunig*, 660 N.W.2d 134, 137 (Minn. 2003). Because neither of Tillman’s constitutional arguments meet the requirements of *Grunig*, we decline to address the arguments for the reasons stated below.

Equal Protection

Tillman argues that reversal of the district court’s award of over 400 days of jail credit for time spent in custody in Illinois on his Illinois charges would violate Tillman’s constitutional right to equal protection of the law because “there is no rational basis for treating similarly situated defendants differently based solely on where the defendant is confined.” In support of his argument, Tillman cites Justice Thissen’s concurrence in *Roy*. 928 N.W.2d 341, 349 (Minn. 2019) (Thissen, J., concurring) (calling the distinction between interjurisdictional custody and intrajurisdictional custody “unsupportable” and without “principled reason”). While Justice Thissen’s concurrence raises serious questions about the continued “validity of the interjurisdiction/intrajurisdiction dichotomy in jail credit jurisprudence,” the concurrence acknowledges that the issue was “not properly presented” in that case. *Id.* at 351. And, in *Roy*, the supreme court reaffirmed the distinction between interjurisdictional and intrajurisdictional custody for purposes of awarding jail credit. *See id.* at 347. Moreover, Tillman does not provide us with any binding legal authority that would permit us to depart from *Roy* and other supreme court precedent establishing a distinction between interjurisdictional and intrajurisdictional custody for purposes of determining jail credit under rule 27.03, subdivision 4(B).

Therefore, we decline to address Tillman’s equal-protection argument for the first time on appeal.²

Due Process

We also decline to consider Tillman’s due-process argument, but for a different reason—namely, there are not sufficient facts in the record for this court to consider the argument. Tillman argues that his due-process rights were violated because more than one year elapsed from when Tillman signed the waiver of extradition to when he was sentenced on the Minnesota charges. He contends this “delay” in sentencing “far exceeds what should be permitted” by the Due Process Clause.

In making his due-process argument, Tillman relies primarily on the United States Supreme Court’s decision in *Betterman v. Montana*, 578 U.S. 437 (2016). In *Betterman*, the Supreme Court held that the Sixth Amendment right to a speedy trial does not apply once a defendant is found guilty. *Id.* at 448. However, in dicta, the Supreme Court noted that a criminal “defendant’s due process right to liberty, while diminished, is still present” after being convicted. *Id.* The Supreme Court also suggested in dicta that an inordinate delay in sentencing may violate a defendant’s due process rights. *Id.* at 439, 448. The

² While we decline to address Tillman’s equal-protection argument, we acknowledge that the argument raises an important legal issue that the supreme court has determined warrants its review. *See State v. Johnson*, No. A24-0245, 2024 WL 3755896, at *4 (Minn. App. Aug. 12, 2024), *rev. granted and stayed* (Minn. Oct. 30, 2024). But it is unclear whether the supreme court will reach the equal-protection issue in the *Johnson* case because there is also a jurisdictional issue on review. *State v. Johnson*, 8 N.W.3d 243, 246 (Minn. App. 2024) (holding this court has jurisdiction to hear a state appeal of the award of jail credit when revoking a defendant’s probation and imposing a prison sentence), *rev. granted* (Minn. Oct. 15, 2024).

Supreme Court further stated, in a footnote, that relevant considerations to evaluate such a due-process claim could include “length of and reasons for delay, the defendant’s diligence in requesting expeditious sentencing, and prejudice.” *Id.* at 448 n.12.

Even assuming the dicta in *Betterman* is binding, we are not able to address Tillman’s due-process argument because the record before us does not contain the facts necessary to fully evaluate the relevant considerations identified in *Betterman*. There is no information in the record on appeal showing why the state did not bring Tillman forth earlier for sentencing. Additionally, there is no record regarding what steps, if any, Tillman took after he signed the waiver of extradition. In other words, there is no evidence of the reason for the delay in sentencing. Nor is there any evidence of Tillman’s diligence (or lack thereof) in requesting sentencing. Accordingly, there are not sufficient facts in the record for this court to consider whether the delay in sentencing constitutes a violation of Tillman’s due-process rights or whether any violation is appropriately remedied by granting Tillman jail credit for the time he spent in custody in Illinois after signing the extradition waiver—the period of time awarded by the district court.

We are not persuaded otherwise by Tillman’s reliance on *Grunig* to support his contention that this issue is properly before us. In *Grunig*, the district court held an omnibus hearing at which the relevant facts were established. 660 N.W.2d at 137. Furthermore, “[r]elatively few facts [were] necessary” for this court to analyze the issues presented in *Grunig*. *Id.* at 135. Here, by contrast, no record was developed on the reason for the delay in sentencing or on Tillman’s efforts to be sentenced. While we acknowledge that establishing a sufficient record on the relevant facts may have been more challenging

in this case than in *Grunig*, this court cannot address an issue for the first time on appeal without sufficient facts in the record. *Id.* at 137. Therefore, because the record is not sufficient for us to review Tillman’s due process argument, we decline to consider it.

III. The doctrine of laches does not support the district court’s award of jail credit for time served in Illinois for Illinois charges.

Finally, Tillman argues that the doctrine of laches supports the district court’s award of jail credit, including time spent in custody in Illinois. Laches is an equitable doctrine that seeks to “prevent one who has not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay.” *Monaghan v. Simon*, 888 N.W.2d 324, 328 (Minn. 2016) (quoting *Winters v. Kiffmeyer*, 650 N.W.2d 167, 169 (Minn. 2002)). Tillman argues “the record shows that the government unreasonably delayed in getting Tillman sentenced” and that “it would be inequitable to allow the state to benefit” by denying Tillman jail credit due to this delay. However, as stated above, there is an insufficient record to determine whether the state was the cause in the delay in Tillman’s sentencing. Furthermore, the supreme court has “never applied laches in a criminal case,” *State v. Hentges*, 844 N.W.2d 500, 507 (Minn. 2014), and Tillman provides no authority that supports the application of laches in a criminal context. Consequently, we reject Tillman’s argument based on laches.

Conclusion

In sum, the state has demonstrated that the district court erred as a matter of law when it awarded jail credit to Tillman that included credit for time served in another state on charges arising in that state. *See Roy*, 928 N.W.2d at 347. And Tillman’s arguments

for affirming the award of jail credit either lack merit or are not properly raised on appeal. We therefore reverse and remand for the district court to recalculate the award of jail credit in a manner consistent with this opinion and the supreme court's decision in *Roy*.

Reversed and remanded.