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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0283**

Bee Chue Chang, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 10, 2009
Affirmed
Kalitowski, Judge**

Ramsey County District Court
File Nos. K4-04-1497, K6-04-1498

Lawrence Hammerling, Chief Appellate Public Defender, James R. Peterson, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Susan Gaertner, Ramsey County Attorney, Mark Nathan Lystig, 50 West Kellogg Boulevard, Suite 315, St. Paul, MN 55102 (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Kalitowski, Judge; and Stoneburner, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Bee Chue Chang challenges the district court's denial of his petition for postconviction relief, arguing that the district court erred in denying his request for jail credit. We affirm.

DECISION

Appellant argues that there was probable cause to charge him with possession of a firearm by an ineligible person for the benefit of a gang on December 6, 2000, and therefore, he should have received jail credit for the 187 days he spent incarcerated before he was formally arrested on August 17, 2001. Because the district court properly determined that the police did not have probable cause to charge appellant until appellant's confession in September 2001, the court properly denied appellant's postconviction petition for jail credit.

The granting of jail credit is not discretionary with the district court. *State v. Parr*, 414 N.W.2d 776, 778 (Minn. App. 1987), *review denied* (Minn. Jan. 15, 1988). "Awards of jail credit are governed by principles of fairness and equity and must be determined on a case-by-case basis." *State v. Arend*, 648 N.W.2d 746, 748 (Minn. App. 2002) (quoting *State v. Bradley*, 629 N.W.2d 462, 464 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001)).

A defendant is entitled to jail credit for all of the time spent in custody following arrest, including time spent in custody on other charges, beginning on the date when the prosecution has probable cause to charge the defendant with the current offense. *State v.*

Fritzke, 521 N.W.2d 859, 862 (Minn. App. 1994); *see* Minn. R. Crim. P. 27.03, subd. 4(B). The defendant has the burden to establish entitlement to jail credit for a specific period of time. *State v. Willis*, 376 N.W.2d 427, 428 n.1 (Minn. 1985).

On December 6, 2000, St. Paul police officers, pursuant to a search warrant, searched the home of appellant's sister. During the search, police found several firearms. When the police interviewed appellant's sister after the search, she stated that the firearms belonged to appellant and that he and three of his friends dropped them off at her residence. Appellant's sister identified three of appellant's friends from booking photographs.

On December 28, 2000, appellant was adjudicated delinquent for criminal damage to property and spent 3 days in custody at the Ramsey County Juvenile Detention Center followed by 184 days at Elmore Academy. In denying appellant's request for 187 days of jail credit, the district court did not address whether Elmore Academy is a facility where the "confinements and limitations imposed" are the "functional equivalent of those imposed at a jail, workhouse, or regional correctional facility," thereby permitting jail credit for time spent there. *Asfaha v. State*, 665 N.W.2d 523, 528 (Minn. 2003). Because the district court did not decide this issue, we will not address it on appeal.

On August 17, 2001, appellant was arrested on suspicion of burglary. One month later, during a police interview, appellant confessed that between September 1, 2000, and November 20, 2000, he and fellow gang members stole guns and left them at his sister's house. Appellant also admitted that the firearms were going to be used for the benefit of

his gang. Subsequently, the state charged appellant with possession of a firearm by an ineligible person for the benefit of a gang.

Appellant asserts that probable cause existed to charge him with possession of a firearm by an ineligible person for the benefit of a gang on December 6, 2000, because of the information police possessed from the search of his sister's residence. We disagree.

Probable cause exists when it could reasonably be believed that a crime had been committed by the person to be arrested. *State v. Morales*, 532 N.W.2d 268, 269-70 (Minn. App. 1995). But merely discovering the guns, receiving an uncorroborated statement that the firearms belonged to appellant, and knowing that appellant's sister identified the persons who accompanied appellant to her house did not necessarily establish probable cause to charge appellant with possession of a firearm by an ineligible person for the benefit of a gang.

To prove possession of a firearm by an ineligible person, the state must show either actual or constructive possession. *State v. Loyd*, 321 N.W.2d 901, 902 (Minn. 1982). Because the firearms were not found on appellant's person, the state had to show constructive possession. Constructive possession is shown if (1) police found the gun in a place under appellant's exclusive control to which other people did not normally have access or (2) the police found the gun in a place where others had access but there is a strong possibility that appellant was, at the time, consciously exercising dominion and control over it. *See State v. Florine*, 303 Minn. 103, 105, 226 N.W.2d 609, 611 (1975) (considering constructive possession of narcotics). Here, the firearms were found in appellant's sister's residence to which others had access. And there is nothing in the

record to show that appellant at any time was exercising dominion and control over his sister's residence. We conclude that the uncorroborated statement by appellant's sister, who may have had an interest in denying ownership of the firearms, is not sufficient to establish probable cause that appellant had constructive possession of the firearms for the benefit of a gang.

Moreover, the district court correctly noted that gun possession cases often require a detailed investigation of the underlying facts before a defendant is charged. Thus, on these facts it was reasonable for the police to conduct a detailed investigation before charging appellant with such a serious offense based on an uncorroborated statement.

Additionally, there is nothing in the record to indicate that the police investigation was completed before appellant was formally arrested in August 2001. And while the conclusion of an investigation is not determinative of whether probable cause exists, it is a relevant factor. *Morales*, 532 N.W.2d at 270; *State v. Folley*, 438 N.W.2d 372, 374-75 (Minn. 1989). In *Morales*, we concluded that appellant was entitled to jail credit beginning June 3, 1994, rather than his first court appearance on July 27, 1994, because the police had probable cause to charge appellant on June 3, when they possessed corroborating evidence. *Morales*, 532 N.W.2d at 269-70. In contrast, here, the police did not possess evidence corroborating appellant's sister's statement until appellant's confession following his arrest on another charge. Because the state did not have probable cause to charge appellant until after his arrest, when he confessed to the crime and corroborated his sister's statement, we conclude that the district court did not err when it denied appellant's request for jail credit.

Finally, because there was no probable cause to charge appellant until his confession in September 2001, we need not address appellant's argument that the district court erred in finding that appellant had to establish actual manipulation by the state in order to prevail in his petition for jail credit.

Affirmed.