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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-2006**

State of Minnesota,  
Respondent,

vs.

Jeremy Darryl Jones,  
Appellant.

**Filed April 23, 2012  
Reversed and remanded  
Randall, Judge\***

Hennepin County District Court  
File No. 27-CR-08-35863

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Alan J. Harris, Rebecca Stark  
Holschuh, Assistant County Attorneys, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jennifer L. Laueremann, Assistant  
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Schellhas, Judge; and  
Randall, Judge.

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

## UNPUBLISHED OPINION

**RANDALL**, Judge

Appellant challenges the district court's denial of jail-time credit, arguing that the district court erred by failing to address whether the treatment facility where he was placed was the functional equivalent of a jail, workhouse, or regional correctional facility. We agree and reverse and remand.

### FACTS

In March 2006, 17-year-old appellant Jeremy Jones pleaded guilty to possession of a firearm by an ineligible person. The district court adjudicated Jones delinquent, imposed a stayed adult sentence of 50 months, placed him on extended jurisdiction juvenile (EJJ) probation, and ordered him to a secure juvenile treatment facility. Jones was transported to Wyalusing Academy in Wisconsin, where he remained from March 27, 2006, until he was successfully discharged from the program on October 4, 2006.

In May 2008, Jones pleaded guilty to third-degree burglary and received a stay of imposition. Because of the burglary, the district court revoked Jones's EJJ probation and entered an adult conviction of possession of a firearm by an ineligible person. The district court again imposed a sentence of 50 months' imprisonment, stayed execution of the sentence, and placed Jones on probation.

On December 29, 2010, after further probation violations, the district court executed Jones's 50-month sentence, granting him 416 days of jail credit. At the same hearing, the district court executed an 18-month sentence for the burglary conviction. Due to a clerical error, however, the two sentences were transposed. Jones petitioned for

postconviction relief to correct the sentences and also requested 191 days' additional jail credit for the time he spent at Wyalusing. The district court corrected the sentences but denied Jones's request for additional jail credit. This appeal follows.

## DECISION

The granting of jail credit *is not discretionary* with the district court. *State v. Doyle*, 386 N.W.2d 352, 354 (Minn. App. 1986). Whether a defendant is entitled to jail credit depends on the facts of the particular case. *State v. Razmyslowski*, 668 N.W.2d 681, 683 (Minn. App. 2003). "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." *State v. Johnson*, 744 N.W.2d 376, 379 (Minn. 2008). Appellate courts review the district court's factual findings underpinning jail-credit decisions for clear error and its legal conclusions de novo. *Id.*

A defendant must be awarded jail credit, to be deducted from his executed sentence, for time spent "in custody" in connection with the offense or behavioral incident being sentenced, including time spent in custody from a prior stay of imposition or execution of sentence. Minn. R. Crim. P. 27.03, subd. 4(B). Time "in custody" includes time spent in jails, workhouses, and regional correctional facilities, Minn. Sent. Guidelines III.C, or time spent "at juvenile facilities where the level of confinement and limitations are the functional equivalent of a jail, workhouse, or regional correction facility." Minn. R. Juv. Delinq. P. 19.11, subd. 3(D); *see Asfaha v. State*, 665 N.W.2d 523, 527-28 (Minn. 2003) (holding that fairness and equity require that jail credit be

granted for time spent in a residential treatment facility if the facility is the “functional equivalent” of a jail, workhouse, or regional correctional facility).

The district court denied Jones’s request for jail credit for his time at Wyalusing, stating only that Wyalusing is “not a locked facility.” Jones argues that the district court failed to fairly consider whether Wyalusing is the functional equivalent of a jail, workhouse, or regional correctional facility. The state agrees that the district court’s decision was perfunctory. The state argues that we should nonetheless affirm the denial of jail credit because “it is supported by the record.” We disagree.

The analysis required under *Asfaha* and Minn. R. Juv. Delinq. P. 19.11 is fact specific. The district court cannot rely on labels but “must look closely at the facts to determine the level of confinement and limitations imposed on a defendant.” *Razmyslowski*, 668 N.W.2d at 684 (citing *Asfaha*, 665 N.W.2d at 528). This means consideration of the conditions at the particular facility, such as the nature and extent of barriers to entry and exit and the limits on when and how the defendant was permitted to leave the facility, etc. etc. *See Asfaha*, 665 N.W.2d at 527 (considering evidence of centrally controlled electronic doors, secure fenced exercise area, bars on outside windows, surveillance cameras throughout the building, individual cells locked at night and during crises, and residents permitted to leave the building for medical appointments or court hearings only with mechanical restraints); *Razmyslowski*, 668 N.W.2d at 684 (considering evidence of centrally controlled electronic doors, secured fenced facility, and transportation off premises with handcuffs attached to security waist belts and accompanied by armed guard).

The sparse record before the district court, which consisted of little more than Jones's affidavit briefly describing Wyalusing, does not provide an adequate basis for the district court's single finding that Wyalusing is "not a locked facility," let alone an adequate basis for our review of whether the conditions in that facility make it the functional equivalent of a jail, workhouse, or regional correctional facility. Appellant's affidavit was the only sworn evidence; the state produced none. While the defendant bears the burden of establishing that he is entitled to jail credit for a specific period of time, *State v. Garcia*, 683 N.W.2d 294, 297 (Minn. 2004), the district court does not have discretion to deny jail credit for time the defendant spent in custody. *See Doyle*, 386 N.W.2d at 354. The district court is charged with "ensur[ing] that the record accurately reflects all time spent in custody." Minn. R. Juv. Delinq. P. 19.11, subd. 3(D); *see also* Minn. Sent. Guidelines III.C.

We do not have a full and accurate record as to "what is Wyalusing." On this record, we reverse the district court's decision and remand for the district court to consider whether the conditions at Wyalusing are the functional equivalent of a jail, workhouse, or regional correctional facility. To ensure that the record accurately reflects those conditions, the district court shall permit both parties a reasonable period of time to submit evidence on this issue, including but not limited to pamphlets, brochures, statements, and depositions from staff or administrators indicating the nature and extent of security measures implemented at Wyalusing. *See Asfaha*, 665 N.W.2d at 527 (considering a letter from the facility's coordinator of intake and clinical services). If these security measures are the functional equivalent of a jail, workhouse, or regional

correctional facility, the district court shall award Jones jail credit for the 191 days he was at Wyalusing.

**Reversed and remanded.**