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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-1754**

State of Minnesota,  
Respondent,

vs.

Bernard David Ahlers,  
Appellant.

**Filed July 22, 2013  
Affirmed in part, reversed in part, and remanded  
Ross, Judge**

Dakota County District Court  
File No. 19-KX-03-002009

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

James C. Backstrom, Dakota County Attorney, Kevin J. Golden, Assistant County  
Attorney, Hastings, Minnesota (for respondent)

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Considered and decided by Ross, Presiding Judge; Chutich, Judge; and Kirk,  
Judge.

**UNPUBLISHED OPINION**

**ROSS, Judge**

Convicted drug offender Bernard Ahlers challenges the district court's calculation  
of jail credit toward his sentence, arguing that he is entitled to an additional 245 days'

credit for time spent in custody in Minnesota and California. Because Ahlers's time spent in custody in California was not solely related to his Minnesota offense, we affirm in part. But because he is entitled to additional jail credit for time served in Minnesota, we reverse in part and remand for resentencing.

## FACTS

Bernard Ahlers pleaded guilty in 2003 to one count of attempted first-degree controlled substance crime (Minn. Stat. §§ 152.021, subd. 2(a), 3(a), 609.17, subds. 1, 4(2) (2002)). The district court sentenced Ahlers to 43-months' imprisonment, stayed, and 10-years' probation. It later granted Ahlers's request to leave Minnesota for California to participate in chemical-dependency treatment. Ahlers's probation was transferred to California under the Interstate Compact for Adult Supervision. *See* Minn. Stat. § 243.1605 (2012).

In California, Ahlers violated the terms of his probation by failing to return to Minnesota after completing treatment, to remain in contact with probation, and to remain law-abiding. When Ahlers returned to Minnesota in July 2006 and admitted to the violations, the district court originally stated that it was going to revoke his probation, and it scheduled a sentencing hearing. But after the sentencing hearing the district court reinstated the same terms and conditions of probation, adding only that Ahlers must serve 161 days in jail, offset by 161 days' credit for time served.

Ahlers returned to California with the district court's permission. In June 2011, California charged him with four controlled-substance offenses. The California district court set bail at \$50,000. Ahlers did not post bail. On December 7, Ahlers pleaded guilty

to one of the offenses and was sentenced to 365 days in jail. The California court released him to undergo chemical-dependency treatment pending an opening in the program. But Ahlers remained in custody until March 2012 when he completed his California sentence and was extradited to Minnesota.

On his return to Minnesota, Ahlers admitted that he violated the terms of his probation. The district court executed his previously stayed 43-month sentence, but Ahlers and the state disputed the amount of jail credit that should apply against the sentence. Ahlers contended that he was entitled to four days for time spent in the Ramsey County Adult Detention Center in 2008, the 161 days ordered in the September 2009 probation-violation order, various periods of time spent in custody in California, and all of the time spent in custody after March 10, 2012, when he became available for extradition to Minnesota. The district court concluded that Ahlers was entitled to 276 days of jail credit—the 161 days of the September 2009 probation-violation order and 115 days for time served after he became available for extradition. Ahlers appeals the district court's calculation of jail credit.

## **D E C I S I O N**

Ahlers contends that the district court erred by failing to include three periods in its jail-credit calculation. The district court must state and deduct the number of days the defendant spent in custody in connection with the offense. Minn. R. Crim. P. 27.03, subd. 4(B). The defendant bears the burden to establish that he is entitled to jail credit, *State v. Willis*, 376 N.W.2d 427, 428 n.1 (Minn. 1985), but the decision to grant or deny jail

credit is not discretionary, *State v. Hadgu*, 681 N.W.2d 30, 32 (Minn. App. 2004), *review denied* (Minn. Sep. 21, 2004).

A challenge to the district court's award of jail credit raises a mixed question of law and fact. *State v. Johnson*, 744 N.W.2d 376, 379 (Minn. 2008). "[T]he [district] court must determine the circumstances of the custody the defendant seeks credit for, and then apply the rules to those circumstances." *Id.* Interpretation of the rules of criminal procedure is a question of law reviewed de novo. *Id.* But we will rely on a district court's factual findings unless they are clearly erroneous or contrary to law. *Id.*

#### **A. Time Served in Minnesota**

Ahlers argues that the district court erred by failing to include the four days of credit for the time he spent in the Ramsey County jail between February 20 and February 23, 2004. Probation authorities identified those days when it recommended the district court to vacate Ahlers's stay and execute his sentence. But the district court did not rule on whether Ahlers is entitled to jail credit for that period. We generally consider only those issues presented to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). But courts may correct sentences not authorized by law at any time. Minn. R. Crim. P. 27.03, subd. 9. Likewise, courts can correct clerical mistakes arising from an oversight or omission within a judgment, order, or the record at any time. *Id.*, subd. 10. And "[t]he general intra-jurisdictional rule is that a defendant is entitled to jail credit for *all* time spent in custody between his arrest on the charge in proceedings in which credit is sought and his sentencing for that offense." *Hadgu*, 681 N.W.2d at 32–33 (emphasis added). This rule "focuses on principles of fairness and

equity, with regard for whether the denial of credit would result in a de facto consecutive sentence or would make the total time served turn on irrelevancies or matters subject to manipulation by the prosecutor.” *Id.* at 33.

The state argues that the parties agreed that the 161 days of jail credit was correct. Acquiescence to the mistake is not grounds to ignore it. And the state is not accurate; Ahlers identified the four days in his memorandum in support of his jail-credit calculation and argued at the probation-violation hearing that he is entitled to them.

The state next argues that Ahlers waived any challenge to his jail-credit determination because Minnesota Rule of Criminal Procedure 28.05, subdivision 1(1), requires a party to appeal a sentence within 90 days after judgment and sentencing. The argument has two problems. First, Ahlers is not appealing a sentence from 2009, as the state suggests. He is instead appealing the district court’s recent jail-credit calculation. Second, rule 27.03 allows defendants to challenge illegal sentences or clerical mistakes at any time. The state’s untimeliness argument fails.

We conclude that Ahlers is entitled to jail credit for time spent in custody in Ramsey County jail in February 2004. But the record leaves unclear whether he is entitled to three or four days. So we remand to the district court to determine the correct credit.

#### **B. Time Served in California**

Ahlers contends that he is entitled to jail credit for two custodial periods in California. The rule for calculating interjurisdictional jail credit differs from the intrajurisdictional rule. A defendant may receive credit for jail time served in a foreign

jurisdiction only if he is being held *solely* in connection with the Minnesota offense. *Willis*, 376 N.W.2d at 428.

**1. June 28, 2011–December 7, 2011 (163 days)**

Ahlers argues that the district court’s calculation is clearly erroneous because he is entitled to jail credit for the period between June 28, 2011—the date bail was set—and December 7, 2011—the date he pleaded guilty. Ahlers relies largely on affidavits to support his argument. His girlfriend’s father asserted that he had the funds to post bail, but the bail bondsman “indicated that we were unable to post bail because of [Ahlers’s] Minnesota case.” Ahlers’s girlfriend asserts that her “parents could not bail [Ahlers] out because there was currently a parole hold on him” and that she learned from a parole officer “that only Minnesota could lift the hold.” Ahlers’s California attorney corroborates that Ahlers was not allowed to be released on bail because of the Minnesota hold.

The district court found that bail was set at \$50,000 on June 28, but that no one posted it, and it concluded that none of Ahlers’s affidavits indicated that Ahlers was prevented from posting bail. The district court added that Ahlers had other pending criminal matters in California and Wisconsin, casting doubt on his argument that he was being held solely on the Minnesota offense.

The district court’s findings are not clearly erroneous or contrary to law. In *State v. Willis*, the supreme court ruled that a detainee was not entitled to jail credit for the period between the placement of a hold by Minnesota authorities and the date he was acquitted of the out-of-state charges. 376 N.W.2d at 428–29. The supreme court explained that

“[b]ail had been set on the [out-of-state] charge before the Minnesota hold was imposed, but defendant did not post bail.” *Id.* at 428. Here, the affidavits do not indicate that Ahlers was prevented from posting bail, or that anyone actually attempted to post bail on his behalf. Similar to the appellant in *Willis*, Ahlers remained in jail due to his California offense *and* the Minnesota offense because bail was not posted, but Ahlers was not prevented from posting bail.

The record also contains evidence of a pending Wisconsin case and a bench warrant, indicating that Ahlers might have been held on other matters. And Interstate Commission for Adult Offender Supervision Rule 5.101(c) (2012) prevents Minnesota from retaking Ahlers without permission from California or before he completes his California sentence:

If the offender has been charged with a subsequent criminal offense in the receiving state [California], the offender shall not be retaken [by the sending state, Minnesota] without the consent of the receiving state, or until criminal charges have been dismissed, sentence has been satisfied, or the offender has been released to supervision for the subsequent offense.

Minnesota and California are members of the commission. *See* Cal. Penal Code § 11180 (West 2012); Minn. Stat. § 243.1605 (2010). No evidence suggests that California permitted Minnesota to take Ahlers or that Ahlers finished his sentence before March 2012. Ahlers concedes that he satisfied his sentence on March 10, 2012. Ahlers’s confinement could not have been solely attributable to his Minnesota offense. For all of these reasons, the district court did not err by concluding that Ahlers did not meet his burden to show entitlement to an additional 163 days of jail credit.

**2. December 23, 2011, to March 10, 2012 (78 days)**

Ahlers argues that the district court's calculation is clearly erroneous because he is entitled to jail credit for the period between December 23, 2011—the date the district court permitted him to enter inpatient treatment—and March 10, 2012—the date he became available for transfer to Minnesota.

Ahlers's sister provided a detailed account of her efforts to secure treatment for him. But Ahlers's attorney told her that California would not release him from jail for treatment due to a "parole hold." Ahlers's sister alleges that she had conversations and met with parole staff who stated that California was holding Ahlers on behalf of Minnesota and that California needed permission from Minnesota to release him for treatment. Ahlers's California attorney states that Ahlers was denied release to chemical-dependency treatment because of the Minnesota interstate compact hold.

The district court was not obligated to credit this testimony, which was largely hearsay. It held that Ahlers was not entitled to jail credit during the period. The district court's determination is not clearly erroneous, and, as noted, it is consistent with the law. The interstate-compact rules prevented Ahlers's release to Minnesota from California without California's permission or Ahlers's completion of his California sentence.

**Affirmed in part, reversed in part, and remanded.**