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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1200**

State of Minnesota
Respondent,

vs.

Thomas Lee Drilling,
Appellant.

**Filed January 25, 2011
Affirmed in part, reversed in part, and remanded
Shumaker, Judge**

Cass County District Court
File No. 11-CR-07-418

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

Christopher J. Strandlie, Cass County Attorney, Barbara Harrington, First Assistant
County Attorney, Walker, Minnesota (for respondent)

Larry A. Kimball, Kimball Law Office, Walker, Minnesota (for appellant)

Considered and decided by Shumaker, Presiding Judge; Peterson, Judge; and
Minge, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

In this appeal, appellant Thomas Lee Drilling argues that the district court erred in
denying him custody credit against his Minnesota sentence for time he spent incarcerated

in Iowa on two sexual-abuse convictions. Because six days of Drilling's Iowa incarceration were solely in connection with his Minnesota offense, we reverse the district court in part, and remand for amendment of the record to reflect this credit. But because the remainder of Drilling's incarceration in Iowa was not solely in connection with his Minnesota offense, we affirm the district court's denial of additional custody credit.

FACTS

Appellant Thomas Lee Drilling was arrested in Evansdale, Iowa, on January 3, 2007, for sexual abuse of a minor. Upon the determination that the arrest was based on incidents that occurred exclusively in Minnesota, Drilling was released from jail in Iowa on January 8, 2007. Further investigation resulted in new charges against Drilling in Iowa for sexual abuse of two additional victims. Since February 16, 2007, Drilling has been incarcerated in Iowa, serving concurrent ten-year sentences for two third-degree sexual-abuse convictions. His scheduled release date is February 16, 2012.

The offense for which Drilling was initially arrested in Iowa led to his conviction of criminal sexual conduct in the first degree in Cass County, Minnesota, on August 24, 2009. The district court sentenced Drilling to the custody of the Minnesota Commissioner of Corrections for a period of 117 months, with a minimum term of imprisonment of 78 months and a maximum supervised-release term of 39 months. The district court did not give him custody credit for any time he served in Iowa correctional facilities. Claiming that the district court erred in denying full custody credit, Drilling appealed.

DECISION

Drilling argues that the district court erred in denying him custody credit against his Minnesota sentence for time he spent incarcerated in Iowa. A defendant has the burden of establishing that he is entitled to jail credit for a specific period of time. *State v. Willis*, 376 N.W.2d 427, 428 n. 1 (Minn. 1985). “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). When the district court sentences a defendant, it “[s]hall assure that the record accurately reflects all time spent in custody in connection with the offense or behavioral incident for which sentence is imposed. Such time shall be automatically deducted from the sentence” Minn. R. Crim. P. 27.03, subd. 4(B). “The [district] court must pronounce credit for prior imprisonment at the time of sentencing.” Minn. Stat. § 609.145, subd. 3 (2010). “A district court's decision whether to award credit is a mixed question of fact and law; the [district] 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). Accordingly, appellate courts review the district court's factual findings underpinning custody-credit decisions for clear error and its legal conclusions de novo. *Id.* Because the custody-credit issue in this case turns on applying the proper legal test, the standard of review is de novo.

Drilling argues that the district court erred when it failed to give him custody credit against his Minnesota sentence for time spent in Iowa correctional facilities from (1) January 3, 2007, through January 8, 2007, the time between his initial arrest and

release in Iowa; (2) February 15, 2007, to August 24, 2009, the time between the filing of the Cass County complaint and Drilling's plea of guilty; (3) August 24, 2009, to April 19, 2010, the time between the plea of guilty and sentencing; and (4) April 19, 2010, the date of sentencing, to the present. The district court determined that Drilling is not entitled to any custody credit for time he served in Iowa.

Custody credit is not allowed for incarceration in another state unless the incarceration is "solely in connection" with the Minnesota offense. *State v. Brown*, 348 N.W.2d 743, 748 (Minn. 1984); *Willis*, 376 N.W.2d at 429. In *Willis*, the state requested the defendant's extradition to face Minnesota charges while he was in Illinois custody pending the resolution of Illinois charges. 376 N.W.2d at 428. The supreme court held that Willis was entitled to jail credit for the time in Illinois custody only after he had been acquitted of the Illinois charges, and not for the time in Illinois custody when both a Minnesota hold and Illinois charges were pending, because only the post-Illinois-acquittal portion of incarceration was solely in connection with the Minnesota charges. *Id.* at 428-29.

The interjurisdictional custody-credit rule differs from that governing custody credit for incarceration time in Minnesota. *State v. Hadgu*, 681 N.W.2d 30, 32-33 (Minn. App. 2004), *review denied* (Minn. Sept. 21, 2004). In intrajurisdictional cases (i.e., when both cases are in Minnesota courts), the "in connection with" test in rule 27.03, subd. 4(B), has been relaxed by the supreme court to consider principles of fairness and equity. *Id.* at 33. But for cases involving custody credit for time spent in another state, the supreme court has indicated that the interjurisdictional rule governs. *State ex rel.*

Linehan v. Wood, 397 N.W.2d 341-42 (Minn. 1986) (reversing court of appeals' decision on jail credit in an interjurisdictional case because the court erroneously relied on intrajurisdictional—not interjurisdictional—caselaw).

Both rules apply in part here. Drilling identifies four periods of incarceration for which he claims entitlement to custody credit. As discussed below, the intrajurisdictional rule applies to the first of those periods, and Drilling is entitled to credit for incarceration during that time. As to the other three periods, the interjurisdictional rule is applicable, and Drilling is not entitled to custody credit for incarceration during any of those periods.

Drilling's initial arrest in Iowa

Drilling was arrested and placed in an Iowa jail on January 3, 2007, after a victim (who is a minor) reported to Iowa police that Drilling sexually abused him. Upon the determination that Iowa lacked jurisdiction to charge him for the crime because it was shown that the incidents for which he was arrested occurred exclusively in Minnesota, Drilling was released from custody on January 8, 2007.

Drilling's conviction in Cass County, Minnesota, stemmed from the offense that led Iowa police to arrest and jail him for six days in January 2007. He was released from the Iowa jail because his arrest was based solely on conduct occurring in Minnesota. Thus, Drilling's time in custody between January 3, 2007, and January 8, 2007, was solely in connection with his Minnesota offense, and he is entitled to credit against his Minnesota sentence for this time period. The state concedes that Drilling should receive credit for the six days served in the Iowa jail in January 2007.

The district court erred in its denial of custody credit against Drilling's Minnesota sentence for time he served from January 3, 2007, to January 8, 2007, in the Iowa jail. Accordingly, we reverse the district court's denial of this credit and remand with directions to the district court to amend the record to reflect Drilling's entitlement to six days of custody credit.

Further custody credit

Under the controlling interjurisdictional rule, Drilling is not entitled to further custody credit for the three remaining time periods. Drilling has been incarcerated in Iowa since February 16, 2007, serving concurrent ten-year sentences for two sexual-abuse convictions. His Iowa incarceration is not solely in connection with his Minnesota offense from (1) February 15, 2007, to August 24, 2009, the time between the filing of the Cass County complaint and Drilling's plea of guilty; (2) August 24, 2009, to April 19, 2010, the time between the plea of guilty and sentencing; and (3) April 19, 2010, the date of sentencing, to the present. Therefore, he is not entitled to custody credit against his Minnesota sentence for time spent incarcerated in Iowa during these periods.

Drilling alleges the district court's failure to give custody credit against his Minnesota sentence for time he has spent in Iowa correctional facilities is effectively a consecutive sentence and is simply unfair. He notes that there is a preference for concurrent sentencing, citing *State v. Jennings*, 448 N.W.2d 374, 375 (Minn. App. 1989). Drilling argues that *Jennings* and the cases that follow provide authority for the credit he seeks. *Jennings*, however, is factually distinguishable from the instant case. In *Jennings*, the appellant sought execution of his stayed prison sentence upon a subsequent felony

conviction and incarceration in California. *Id.* at 374. This court held that the appellant had a right to execution of his stayed sentence when imprisoned on a subsequent conviction in California because “[i]t is well established that a defendant serving a prison sentence on a felony has the right to execution of a prior probationary sentence.” *Id.* at 375. Here, Drilling did not receive a stayed sentence and was not on probation in Minnesota at the time he was sentenced to incarceration in Iowa. Additionally, fairness and equity are only considerations in intrajurisdictional cases. *Hadgu*, 681 N.W.2d at 33.

Drilling claims that the district court has the discretion, if not the obligation, to credit foreign jail time against a Minnesota sentence. In support of his argument, Drilling cites to cases including *State v. Bauman* and *State v. Petersen*, which are clearly distinguishable because they involve credit for federal—rather than out-of-state—charges and convictions. *See State v. Bauman*, 388 N.W.2d 795 (Minn. App. 1986), *review denied* (Minn. Aug. 20, 1986); *see also State v. Petersen*, 305 Minn. 478, 235 N.W.2d 801 (1975). Drilling contends that there should be no distinction between the law regarding the federal system or an out-of-state system because both are foreign jurisdictions, but he does not cite any authority for this proposition. His contention that out-of-state cases should be treated similarly to federal cases ignores caselaw, such as *Brown*, *Willis*, and *Parr*, that clearly expresses the intent to treat federal and out-of-state cases differently when awarding jail credit. Also, the district court does not have discretion to issue or to deny custody credit. *Parr*, 414 N.W.2d at 778 (stating “[t]he granting of jail credit is not discretionary with the [district] court”).

Neither *Jennings* nor any other case alters the rule established in *Brown*. Prior caselaw is clear that time attributable to an out-of-state charge may not be credited toward the Minnesota sentence. See *Brown*, 348 N.W.2d at 748. This includes time served after Minnesota sought to obtain a prisoner while another state's charges were pending, *Willis*, 376 N.W.2d at 428-29, and while the defendant was serving a sentence for a conviction in the other state, *Parr*, 414 N.W.2d at 779-80.

To provide Drilling with the relief he seeks would require this court to deviate from the clear precedent set by the supreme court in *Brown*. It is beyond the authority of this court to overturn supreme court precedent. See *Lake George Park, L.L.C. v. IBM Mid-America Emps. Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998) (stating that “[t]his court, as an error correcting court, is without authority to change the law”), *review denied* (Minn. June 17, 1998). Thus, *Brown* is precedent that this court is required to follow, and we affirm the district court's denial of custody credit other than as specified herein.

Affirmed in part, reversed in part, and remanded.