
STATE OF MONTANA,

Plaintiff and Appellee,

v.

MELINDA CRAZYMULE,

Defendant and Appellant.

REPLY BRIEF OF APPELLANT

On Appeal from the Montana Sixteenth Judicial District Court,
Rosebud County, the Honorable Nicholas C. Murnion, Presiding

APPEARANCES:

CHAD WRIGHT
Appellate Defender
KRISTINA L. NEAL
Assistant Appellate Defender
Office of State Public Defender
Appellate Defender Division
P.O. Box 200147
Helena, MT 59620-0147
krneal@mt.gov
(406) 444-9505

ATTORNEYS FOR DEFENDANT
AND APPELLANT

AUSTIN KNUDSEN
Montana Attorney General
BRAD FJELDHEIM
Assistant Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

C. KRISTINE WHITE
Rosebud County Attorney
P. O. Box 69
Forsyth, MT 59327-0069

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

TABLE OF CONTENTS

TABLE OF CONTENTSi

TABLE OF AUTHORITIES.....ii

I. Ms. Crazy mule was in detention after her arrest for the violations which served as the basis for her revocation..... 1

II. Alternatively, Ms. Crazy mule is entitled to elapsed time while in tribal detention as the record supports Ms. Crazy mule’s only misconduct was when she was arrested for the tribal offenses. 3

CONCLUSION 7

CERTIFICATE OF COMPLIANCE..... 9

TABLE OF AUTHORITIES

Cases

<i>State v. Gudmundsen</i> , 2022 MT 178, 410 Mont. 67, 517 P. 3d 146.....	3, 4
<i>State v. Jardee</i> , 2020 MT 81, 399 Mont. 459, 461 P.3d 108.....	4, 6, 7
<i>State v. Miller</i> , 2006 MT 159, 332 Mont. 472, 139 P. 3d 839	2, 3
<i>State v. Tippets</i> , 2022 MT 81, 408 Mont. 249, 509 P. 3d 1	2, 3

Statutes

Montana Code Annotated § 46-18-203(7)(b).....	passim
---	--------

Malinda Crazy mule's probation was revoked because she was arrested and sentenced in tribal court with drug offenses and a child endangerment offense. The district court awarded Ms. Crazy mule with credit for time served in the Rosebud County jail, after she had served her tribal court detention pending her state court revocation. The district court did not provide credit from March 3, 2021 through September 3, 2021, the days that she sat in tribal court detention based on these offenses.

It is undisputed that the only basis for the revocation of Ms. Crazy mule's sentence was the tribal court convictions. It is undisputed that the probation office did not have record of any prior concerns until her relapse which precipitated the tribal court convictions. (9/23/21 Tr. p. 38.) It is further undisputed that Ms. Crazy mule did not commit any new offenses while in tribal detention. Ms. Crazy mule has argued she is entitled to credit, either credit for time served or elapsed time, for the time she served in tribal detention.

I. Ms. Crazy mule was in detention after her arrest for the violations which served as the basis for her revocation.

Montana Code Annotated § 46-18-203(7)(b), requires that upon revocation of a deferred sentence "[c]redit must be allowed for time

served in a detention center . . .” This Court has defined a detention center as “a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to the detention center.” *State v. Tippetts*, 2022 MT 81, ¶19, 408 Mont. 249, 509 P. 3d 1.

Ms. Crazy mule was arrested and placed in tribal detention for the same violations used by the State to revoke her probation. In trying to argue that Ms. Crazy mule is not entitled to credit for the time she was in tribal detention, the State relies upon *State v. Miller*, 2006 MT 159, 332 Mont. 472, 139 P. 3d 839. However, *Miller* is inapplicable to Ms. Crazy mule’s case. In *Miller*, the State filed a petition to revoke the defendant's suspended sentence in part on an Indiana offense. *Miller*, ¶3. Ultimately, since the defendant was incarcerated in Indiana, the State dismissed the petition to revoke. *Miller*, ¶3. After the defendant returned to Montana, he again violated his conditions of probation. *Miller*, ¶4. The defendant argued he was entitled to the time he served while he was incarcerated in Indiana. *Miller*, ¶5.

In affirming the district court, this Court in *Miller* explained “[i]t was only when he violated the conditions of the suspended commitment

after he returned to Montana that the suspension was revoked. *Miller*, ¶10 (emphasis added). This this Court held the defendant was not entitled to time spent in an Indiana prison *on a separate conviction*. *Miller*, ¶9 (emphasis added). Opposite of *Miller*, here the basis for Ms. Crazy mule’s probation revocation was her tribal court convictions. Contrary to *Miller*, Ms. Crazy mule’s tribal court convictions were not separate convictions but were the sole source of her probation revocation. Under the plain language of Mont. Code Ann. § 46-18-203(7)(b), Ms. Crazy mule is entitled to credit for the time she served in tribal detention.

II. Alternatively, Ms. Crazy mule is entitled to elapsed time while in tribal detention as the record supports Ms. Crazy mule’s only misconduct was when she was arrested for the tribal offenses.

Alternatively, if this Court finds that Ms. Crazy mule was not in detention from March 3, 2021 until September 3, 2021, she was still, nonetheless, on probation and entitled to credit for elapsed time. The award of elapsed time credit is mandatory, not discretionary. *State v. Gudmundsen*, 2022 MT 178, ¶8, 410 Mont. 67, 517 P. 3d 146 *citing Tippets*, ¶9.

The statute is not concerned with a defendant’s history of noncompliance. It is concerned only with whether the defendant is compliant during the period of elapsed time at issue. If there is no probation violation during that time, there is no discretion; the statute binds the judge to award street time credit. “[I]t is now insufficient for a district court to base its denial of street time credit solely on a pattern of criminal behavior.” *Gudmundsen*, ¶13 citing *State v. Jardee*, 2020 MT 81, ¶ 11, 399 Mont. 459, 462–63, 461 P.3d 108, 111. In *Jardee*, this Court explicitly stated that, “under § 46–18–203(7)(b), MCA (2017), a district court has no discretion to deny credit for ‘street time’ served under a sentence.” *Jardee*, ¶ 13 (emphasis added). The “2017 version of the statute eliminates this discretion, requiring credit if there have been no violations.” *Jardee*, ¶ 10.

In *Jardee*, this Court found the record contained specific evidence of violations during the period in which Jardee requested credit for elapsed time. *Jardee*, ¶¶12-14. To the contrary, here no evidence was presented that Ms. Crazy mule committed a single violation during the five-month time she served in tribal detention. The State did not allege at any point after filing its March 18, 2021 revocation petition that Ms.

Crazymule committed any new or ongoing violations. All of Ms. Crazymule's probation violations occurred between March 1, 2021 and March 3, 2021, when she relapsed and was arrested on the tribal offenses. (9/23/21 Tr. pp. 20-22.) None of them occurred between March 3, 2021 and the September 23, 2021 disposition hearing. Ms. Crazymule was in Rosebud County custody from September 3 to September 23, 2021, and she rightly received credit for this time served. However, she was also legally entitled to street time credit for the remainder of the elapsed time—from March 3, 2021 to September 3, 2021—because there was no “record or recollection” that she committed any violations during that time. Since the record contains no evidence that Ms. Crazymule committed any probation violations after March 3, 2021; the district court was thus legally bound to grant his request for street time credit.

After March 3, 2021 when Ms. Crazymule was put into tribal detention, she was thus still on probation. The fact that Ms. Crazymule was also in tribal detention did not change this. By the same token, had the district court denied the State's revocation petition, the five months of these proceedings surely would have counted towards the

four-year suspended sentence that Ms. Crazy mule was serving. Her temporary tribal court detention could not reasonably be understood to have stayed or interrupted that suspended sentence. By all accounts, Ms. Crazy mule was on probation up until the district court revoked her suspended sentence on September 23, 2021; she was thus eligible to accrue street time while the proceedings progressed.

It is not uncommon for offenders to receive new offenses or violations, even while in detention. However, here no “record or recollection” exists that Ms. Crazy mule committed a probation violation at any point after the State initiated the revocation proceedings on March 18, 2021. The evidence of Ms. Crazy mule’s relapse and drug use dated exclusively to her tribal arrest on March 3, 2021. The State did not present any evidence or even allege that Ms. Crazy mule committed a violation after March 3, 2021.

The 2017 Legislature expanded mandatory time credits to include not only defendants who are incarcerated or under home arrest, but also those who otherwise serve probationary time “without any record or recollection of violations.” Section 46-18-203(7)(b) (2017). *Jardee* requires the district court to “point to an actual violation by the

defendant, in the relevant time period, found in the record or recollection of the probation officer, to establish a basis for denial of street time credit for that period . . .” *Jardee*, ¶ 11. The probation officer testified, and the district court correctly observed that Ms. Crazy mule was “successful” on probation in the months leading up to her drug relapse on March 1, 2021. (9/23/21 Tr. pp. 38, 51.) However, the court ignored the clear statutory mandate that it “shall . . . allow all of the elapsed time served without any record or recollection of violations as a credit against the sentence.” Section 46-18-203(7)(b) (2017) (emphasis added).

Here, *Jardee* should have directed the district court to award Ms. Crazy mule credit for the time served during her sentence that did not have any violations. Ms. Crazy mule has established that she did not have any violations for a total of five months served during her sentence.

CONCLUSION

For the foregoing reasons, Malinda Crazy mule respectfully asks this Court to remand the case back to the district court so that Ms.

Crazymule's sentence can be credited with an additional five months of credit for time served, from March 3, 2021 until September 3, 2021.

Respectfully submitted this 9th day of November, 2023.

OFFICE OF STATE PUBLIC DEFENDER
APPELLATE DEFENDER DIVISION
P.O. Box 200147
Helena, MT 59620-0147

By: /s/ Kristina L. Neal
KRISTINA L. NEAL
Assistant Appellate Defender

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this reply brief is printed with a proportionately spaced Century Schoolbook text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 1,456, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Kristina L. Neal
KRISTINA L. NEAL

CERTIFICATE OF SERVICE

I, Kristina L. Neal, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 11-09-2023:

Brad Fjeldheim (Govt Attorney)
215 N. Sanders
PO Box 201401
Helena MT 59620-1401
Representing: State of Montana
Service Method: eService

C. Kristine White (Attorney)
Rosebud County Attorney
P.O. Box 69
Forsyth MT 59327
Representing: State of Montana
Service Method: E-mail Delivery

Electronically signed by Kim Harrison on behalf of Kristina L. Neal
Dated: 11-09-2023