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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1785**

Richard Eugene Baumeister, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 2, 2014
Affirmed
Johnson, Judge**

Dakota County District Court
File No. 19-K9-03-003653

Cathryn Middlebrook, Chief Appellate Public Defender, Chelsie Willett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

James C. Backstrom, Dakota County Attorney, Heather D. Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Cleary, Chief Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

In 2003, Richard Eugene Baumeister was placed on probation after he pleaded guilty to first-degree driving while impaired (DWI). Between 2004 and 2012, he failed to appear for hearings related to alleged probation violations. In 2012, the district court revoked his probation, executed his previously stayed prison sentence, and awarded him 263 days of jail credit. On appeal, Baumeister argues that the district court should have awarded him an additional 533 days of jail credit for time he spent in a Colorado prison. We conclude that the district court did not err by not awarding him an additional 533 days of jail credit and, therefore, affirm.

FACTS

In November 2003, Baumeister pleaded guilty to first-degree DWI, in violation of Minn. Stat. § 169A.24 (2002). The district court imposed a 48-month prison sentence but stayed execution of the sentence and placed Baumeister on probation for seven years.

A year later, the state alleged that Baumeister had violated the terms of his probation. The district court scheduled a probation-violation hearing for November 2004, but Baumeister failed to appear. The district court issued a warrant for his arrest. The following year, in October 2005, Baumeister was arrested in California on the warrant. He was in custody there for approximately 75 days before he was extradited to Minnesota.

In February 2006, the district court conducted a probation-violation hearing. The district court declined to revoke Baumeister's probation. Baumeister asked to be released

with permission to return to his home in California. He submitted a letter from his employer, who said that Baumeister's construction job remained open to him. The district court granted his request but ordered him to appear for a probation-review hearing in April 2006. Baumeister failed to appear for the April 2006 review hearing. The district court issued another warrant for his arrest.

Four years later, in June 2010, Baumeister was arrested in Colorado and charged with second-degree assault and first-degree criminal trespass. In October 2010, Baumeister was found guilty and was sentenced to 48 months of imprisonment. In May 2012, Baumeister completed his Colorado sentence and promptly was extradited to Minnesota.

In June 2012, the district court held a probation-violation hearing. Baumeister admitted that he had violated the terms of his probation. The district court executed his 48-month prison sentence. When doing so, the district court awarded Baumeister 263 days of jail credit based on three periods of confinement: (1) 157 days for time spent in custody in Minnesota in 2003 while awaiting trial on the original DWI charge; (2) 75 days for time spent in custody in California in 2006 after being arrested on the Minnesota warrant; and (3) 31 days for time spent in custody in Minnesota in 2012 between the completion of his Colorado sentence and the final probation-revocation hearing.

In December 2012, Baumeister filed a "Motion for Sentence Clarification,"¹ in which he argued that he should be awarded an additional 533 days of jail credit for time

¹Baumeister's motion purports to rely on subdivisions 8, 9, and 10 of rule 27.03 of the Minnesota Rules of Criminal Procedure. Subdivision 8 does not appear to apply

spent in the Colorado prison between 2010 and 2012. Baumeister argued that he is entitled to jail credit for that period of time on the ground that, while he was imprisoned in Colorado, he requested that his stayed sentence be executed. To support this argument, Baumeister referred to three documents that he sent to the Minnesota district court from the Colorado prison. The first is a document entitled “Demand for Disposition of Untried Summons or Complaint,” in which he asked the district court to “bring [his] body [before the court] for the purpose of satisfying any untried summons, complaints, or failure to appear charges.” The second is a document entitled “Request for Final Disposition of Detainer,” in which he asked the district court to enter a final disposition “of all untried indictments, informations or complaints on the basis of which detainers have been lodged against [him] from [Minnesota].” And the third is a document entitled “Motion to be Sentenced *in Absentia*,” in which he asked the district court to execute his Minnesota sentence so that it would run concurrently with his Colorado sentence. In July 2013, the district court denied Baumeister’s motion. Baumeister appeals.

because that provision merely describes the process for entering a judgment. Subdivision 10 does not appear to apply because that provision allows a district court only to correct a clerical mistake. We question whether the motion was properly filed pursuant to subdivision 9, which allows a district court “at any time [to] correct a sentence not authorized by law.” *See Washington v. State*, 845 N.W.2d 205, 210 (Minn. App. 2014). We need not consider or decide whether Baumeister’s request for relief is properly based on subdivision 9 because the state has not challenged Baumeister’s request on that ground.

DECISION

Baumeister argues that the district court erred by denying his request for an additional 533 days of jail credit for time he spent in custody in a Colorado prison.

An offender has the burden of establishing that he is entitled to jail credit. *State v. Johnson*, 744 N.W.2d 376, 379 (Minn. 2008). If an offender satisfies this burden, the district court must award jail credit; the decision is not discretionary. *State v. Clarkin*, 817 N.W.2d 678, 687 (Minn. 2012). Jail credit may be awarded only for time spent in custody “in connection with the offense or behavioral incident being sentenced.” Minn. R. Crim. P. 27.03, subd. 4(B). In addition, a district court “shall assure that the record accurately reflects all time spent in custody in connection with the offense.” Minn. Sent. Guidelines III.C (Supp. 2003). Whether a defendant is entitled to jail credit is “a mixed question of fact and law.” *Johnson*, 744 N.W.2d at 379. If the relevant facts are not in dispute, an appellate court should apply a *de novo* standard of review to a district court’s jail-credit determination. *Clarkin*, 817 N.W.2d at 687.

The Minnesota Supreme Court has set forth two different rules for jail credit. Which rule applies depends on whether an offender seeks credit for time spent in custody in Minnesota (intra-jurisdictional) or time spent in custody in another state (inter-jurisdictional). The intra-jurisdictional rule requires a district court to award “jail credit for *all time* spent in custody between . . . arrest on the charge . . . and . . . sentencing for that offense.” *State v. Hadgu*, 681 N.W.2d 30, 32-33 (Minn. App. 2004) (emphasis added) (citing *State v. Goar*, 453 N.W.2d 28, 29-30 (Minn. 1990)), *review denied* (Minn. Sept. 21, 2004). The inter-jurisdictional rule requires a district court to award jail credit

only for time spent in custody that is “solely’ in connection” with the Minnesota offense. *Id.* at 33 (quoting *State v. Brown*, 348 N.W.2d 743, 748 (Minn. 1984)); *see also State v. Willis*, 376 N.W.2d 427, 428-29 (Minn. 1985).

Because Baumeister seeks jail credit for time spent in custody in Colorado, the inter-jurisdictional rule applies. *See Brown*, 348 N.W.2d at 748. The record clearly shows that Baumeister’s Minnesota warrant was not the sole reason for his incarceration in Colorado. He was arrested, charged, convicted, and sentenced in Colorado for an incident that is unrelated to the Minnesota offense for which he was sentenced. Thus, under a straightforward application of the inter-jurisdictional test, Baumeister is not entitled to jail credit for time spent in custody in Colorado. *See id.*; *Willis*, 376 N.W.2d at 428-29.

Baumeister, however, contends that an opinion of this court, *State v. Jennings*, 448 N.W.2d 374 (Minn. App. 1989), operates as an exception to the inter-jurisdictional jail-credit rule. In *Jennings*, the appellant pleaded guilty to burglary in Minnesota, and the district court stayed execution of a prison sentence and placed him on probation. *Id.* at 374. Before his probation period had expired, Jennings was arrested, charged, convicted, and sentenced in California for burglary. *Id.* While incarcerated in California, Jennings requested the execution of his stayed Minnesota sentence, but the district court denied his request. *Id.* This court, however, concluded that the district court erred by denying the appellant’s request, for four reasons: first, Minnesota has a preference for concurrent sentencing; second, “[i]t is the second sentencing court which specifies whether the sentences run concurrently or consecutively”; third, California, the second sentencing

court, has a “preference for concurrent sentencing in the multi-state sentencing context”; and fourth, Jennings requested the execution of his Minnesota probationary sentence. *Id.* at 375.

Thus, under *Jennings*, it appears that a district court must execute an offender’s probationary sentence if two requirements are satisfied: (1) the offender is serving a sentence in another jurisdiction that has stated a preference for concurrent sentencing in the multi-state context, and (2) the offender requests the execution of the probationary sentence. *See id.* Although *Jennings* did not describe the issue in that case as an issue of jail credit, the state concedes that *Jennings* applies to the issues raised in this case. Thus, for purposes of this appeal, we assume that *Jennings* applies to Baumeister’s request for additional jail credit.

Whether Baumeister is entitled to additional jail credit under *Jennings* depends on the two requirements identified above. Baumeister’s argument falters on the first requirement, whether Colorado has a preference for concurrent sentencing in the multi-state context. The state contends that Baumeister has failed to satisfy his burden of proof because he does not address Colorado’s sentencing preferences. Indeed, Baumeister’s appellate brief is devoid of any arguments or citations relevant to the question whether Colorado has a preference for concurrent sentencing in the multi-state context. Our research indicates that Colorado does not have such a preference. A Colorado trial court *may* order a sentence to run concurrently with a sentence from another state, *People v. Lewis*, 193 Colo. 203, 207, 564 P.2d 111, 114 (1977), but “there is no requirement that a sentence run concurrently with a sentence imposed by a foreign jurisdiction,” *Lander v.*

Evans, 193 Colo. 179, 180, 564 P.2d 115, 116 (1977). Thus, the first *Jennings* requirement is not satisfied in this case, which means that Baumeister has failed to satisfy his burden of proving that he is entitled to jail credit. *See Johnson*, 744 N.W.2d at 379.

Because we have concluded that Baumeister has not satisfied the first *Jennings* requirement, we need not consider whether Baumeister has satisfied the second *Jennings* requirement, that he made a proper request for execution of his sentence.

In sum, the district court did not err by denying Baumeister's request for additional jail credit.

Affirmed.