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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-0711**

State of Minnesota,  
Appellant,

vs.

Stephen Jon Barthold,  
Respondent.

**Filed February 26, 2008  
Reversed and remanded  
Toussaint, Chief Judge**

Washington County District Court  
File Nos. K4-05-621; K1-04-5541; K3-04-5735

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Douglas H. Johnson, Washington County Attorney, Michael C. Hutchinson, Assistant County Attorney, 14949 62nd Street North, Post Office Box 6, Stillwater, MN 55082 (for appellant)

John M. Stuart, State Public Defender, Cathryn Y. Middlebrook, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104; and

Travis C. Schwantes, Washington County Public Defender, 1825 Curve Crest Boulevard, Suite 202, Stillwater, MN 55082 (for respondent)

Considered and decided by Willis, Presiding Judge; Toussaint, Chief Judge; and Peterson, Judge.

## **UNPUBLISHED OPINION**

**TOUSSAINT**, Chief Judge

Appellant State of Minnesota challenges the decision to credit respondent Stephen Jon Barthold with jail time for the 440 days he was incarcerated in Wisconsin for an offense committed in Wisconsin. Because we conclude that the district court erred in crediting the Wisconsin jail time, we reverse and remand for a recalculation of respondent's jail credit time.

### **DECISION**

In September 2005, respondent was arrested in Polk County, Wisconsin, for offering forged checks. He spent 440 days in the Polk County jail. When he was released in December 2006, he returned to Minnesota to answer warrants, chiefly for check forgery and property crimes, in seven Minnesota counties. Between December 2006 and February 2007, district courts in Carver, Hennepin, Wright, and Washington counties granted respondent credit for the time he served in jail in Wisconsin. Appellant challenges the Washington County decision.

A defendant is entitled to credit for “all time spent in custody in connection with the offense or behavioral incident for which sentence is imposed.” Minn. R. Crim. P. 27.03, subd. 4(B). Here, respondent received credit for time spent in custody not in connection with the offenses for which sentence was being imposed. The district court found “extraordinary circumstances” because respondent had been accepted for a treatment program in Wisconsin and concluded that it had discretion to give respondent credit for time that he served in Wisconsin. But the “granting of jail credit is not

discretionary with the trial court.” *State v. Parr*, 414 N.W.2d 776, 778 (Minn. App. 1987), *review denied* (Minn. Jan. 15, 1988).

The district court offered no legal support for the view that it had discretion to grant jail credit for time spent in custody in connection with other offenses, and respondent provides none. Moreover, case law opposes that view. *See State v. Akbar*, 419 N.W.2d 648, 650 (Minn. App. 1988) (“For time spent in out-of-state incarceration, credit is not allowed unless the incarceration is solely in connection with the Minnesota offense.”) (quotation omitted); *State v. Brown*, 348 N.W.2d 743, 748 (Minn. 1984) (“Of course, if part of the time defendant spent in jail in [another state] was in connection with a charge [in that state], he would not be entitled to credit for that time.”), *abrogated on other grounds by State v. Ramey*, 721 N.W.2d 294 (Minn. 2006); *State v. Bentley*, 329 N.W.2d 39, 40 (Minn. 1983) (“defendant is not entitled to credit for time spent in prison in North Dakota before he was paroled to Minnesota authorities”); *see also Asfaha v. State*, 665 N.W.2d 523, 525 (Minn. 2003) (accepting defendant’s argument that “award of jail credit should not depend on whether the defendant is confined in jails, workhouses, [or] regional correctional facilities but instead should depend on whether the defendant was in custody in connection with the offense”) (quotation omitted).

Respondent also argues that all his Minnesota sentences are presumptively concurrent, that his Wisconsin sentence should have been concurrent with them, and that denying him jail credit for the time served in Wisconsin turns concurrent sentences into consecutive sentences. For this argument, he relies on *State v. Folley*, 438 N.W.2d 372, 374 (Minn. 1989). Respondent’s reliance is misplaced. The defendant in *Folley* was

granted jail credit because the prosecutor had directed that the defendant, arrested and held for one offense, not be charged with a second offense unless and until he made bail. *Id.* When the defendant was acquitted of the first offense, he was not released but was immediately charged with the second offense. *Id.* The supreme court remanded for the defendant to receive jail credit for the time preceding his acquittal for the first offense. *Id.* *Folley* is distinguishable.

Finally, respondent relies on *State v. Arend*, 648 N.W.2d 746, 748 (Minn. App. 2002) (“Awards of jail credit are governed by principles of fairness and equity and must be determined on a case-by-case basis.”) to argue that fairness and equity require affirming the award of jail credit. But respondent does not explain why it is fair and equitable that serving time in Wisconsin solely in connection with offenses committed in Wisconsin should excuse him from serving time in Minnesota for offenses committed here.

**Reversed and remanded.**