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Minn. Stat. § 480A.08, subd. 2 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-1576**

State of Minnesota,  
Appellant,

vs.

Bryan Wesley Sam,  
Respondent.

**Filed January 13, 2009  
Reversed and remanded  
Worke, Judge**

Washington County District Court  
File No. 82CR07673

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Considered and decided by Klaphake, Presiding Judge; Lansing, Judge; and  
Worke, Judge.

## UNPUBLISHED OPINION

**WORKE**, Judge

The state argues that the district court erred when it granted respondent jail credit for time spent in segregation following a guilty plea to an assault that occurred while respondent was serving a 144-month sentence. Because the district court erred, we reverse and remand.

## DECISION

The state argues that the district court erred when it granted respondent Bryan Wesley Sam seven months' credit for time spent in segregation because the segregation time was applied to an earlier imposed sentence. "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). "'Awards of jail credit are governed by principles of fairness and equity and must be determined on a case-by-case basis.'" *State v. Arend*, 648 N.W.2d 746, 748 (Minn. App. 2002) (quoting *State v. Bradley*, 629 N.W.2d 462, 464 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001)).

Respondent committed an assault while serving a 144-month prison sentence. Respondent pleaded guilty, waived a presentence investigation, requested jail credit for time spent in segregation as a result of the assault, and was sentenced that same day. The district court sentenced respondent to 15 months, consecutive to the sentence he was currently serving. Over the state's objection, the district court granted respondent's request for jail credit on the 15-month sentence.

The Minnesota Sentencing Guidelines provide that “[f]or felony convictions committed while an offender is serving an executed prison sentence . . . it is presumptive to impose the sentence for the current offense consecutive to the sentence the offender was serving at the time the new offense was committed.” Minn. Sent. Guidelines cmt.

II.F.01. The guidelines also state that

if the intent of the court is to give consecutive sentences, the awarding of jail credit should not result in de facto concurrent sentences. . . . In order to avoid de facto concurrent sentences when a current offense is sentenced consecutive to a prior offense for which the offender is already serving time in a prison or jail, no jail credit shall be awarded on the current offense.

Minn. Sent. Guidelines cmt. III.C.03. The granting of jail credit here makes the 15-month sentence for the assault a de facto concurrent sentence to the sentence respondent was already serving. While there is no caselaw addressing this exact matter, under Minn. Stat. § 609.2232 (2006):

If an inmate of a state correctional facility is convicted of [assault] while confined in the facility, the sentence imposed for the assault shall be executed and run consecutively to any unexpired portion of the offender’s earlier sentence. The inmate is not entitled to credit against the sentence imposed for the assault for time served in confinement for the earlier sentence.

The statute, coupled with the sentencing guidelines, leaves no discretion to the district court to grant jail credit for time spent in segregation.

Respondent argues that for every three days he spent in segregation he received one day of extended incarceration, so the district court properly granted credit for time served in segregation because his initial sentence was increased. But respondent’s initial

sentence was not increased because of time served in segregation. Respondent was serving a 144-month sentence, two-thirds in custody, and, assuming no disciplinary violations, the remaining one-third on supervised release. For every three days in segregation, respondent received one additional day in custody, and one less day on supervised release; his sentence remained at 144 months. Because segregation did not actually result in an increase in respondent's sentence, respondent's argument is without merit. The time spent in segregation applied toward respondent's initial sentence, not the assault. Because the grant of jail credit for time in segregation resulted in seven months' credit on *both* sentences, and because those sentences are to be served consecutively, not concurrently, we reverse and remand to the district court for resentencing.

**Reversed and remanded.**