

**IN THE COURT OF APPEALS OF IOWA**

No. 1-055 / 10-0935  
Filed March 7, 2011

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**JEREMY JAMES GREENING,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Donna L. Paulsen (sentencing order) and Richard G. Blane, II (motion to correct illegal sentence), Judges.

A defendant appeals his criminal sentence, contending the district court erred in denying him credit for time served at the county jail and at a residential rehabilitation center. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Rachel C. Regenold, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, John P. Sarcone, County Attorney, and Jaki Livingston, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ. Tabor, J., takes no part.

**VAITHESWARAN, P.J.**

Jeremy Greening appeals a criminal sentence. He argues the district court erred in denying him credit for time served at the Polk County Jail and at a residential rehabilitation center.

***I. Background Proceedings***

The State charged Greening with second-degree theft, two counts of identity theft, and operating a motor vehicle without the owner's consent. The State also separately charged him with first-degree theft.

Greening subsequently entered a plea agreement under which he was to enter an intensive supervision drug court program. If he successfully completed the program, he would receive a fifteen-year suspended sentence for first-degree theft, second-degree theft, and identity theft, as well as two years of probation. If he was not successful in completing the program, he would serve his prison sentences for these crimes.

Greening did not successfully complete the program. He was held in contempt multiple times for failure to comply with the terms of the program and his participation was revoked. In the interim, he spent time at the Polk County Jail as well as the Harbor of Hope Residential and Rehabilitation Center. Greening pleaded guilty to first-degree theft, second-degree theft, and identity theft and agreed to immediate sentencing.

The district court sentenced Greening to prison and ordered the following: "Defendant is to receive credit for time already served. Defendant shall not receive credit for any time served while under the Intensive Supervision Court: December 1, 2006 to January 16, 2009." The court later allowed Greening a

credit for sixteen days served in the Polk County Jail but stated, “[T]he Defendant shall receive no credit for time served while in jail or when he was living in a halfway house during his participation in Intensive Supervision Drug Court.” The court reiterated this disposition in subsequent orders.

Greening filed a motion for correction of an illegal sentence, which was denied, and this appeal followed. Our review is on error. *State v. Hawk*, 616 N.W.2d 527, 528 (Iowa 2000).

## **II. Analysis**

### **A. Denial of credit for pre-sentencing time served in Polk County Jail**

Greening maintains he should have been credited with 113 days of time spent in the Polk County Jail prior to sentencing. The State responds that Greening is not entitled to a credit for this time because it “was not served because of the offense for which he was ultimately convicted” but for contempt citations based on his failure to comply with the conditions of the drug court program.

The State is correct. Iowa Rule of Criminal Procedure 2.26(1)(f) provides that a defendant “shall receive full credit for time spent in custody *on account of the offense for which the defendant is convicted.*” (Emphasis added). While Greening maintains he was “confined to a county jail for [the] same offenses” he was convicted of, he later acknowledges that he “served jail time for violations of the [drug court] program.” We conclude the jail time for which he seeks this credit was not “on account of the offense for which he was ultimately convicted.”

Iowa R. Crim. P. 2.26(1)(f). Accordingly, the district court did not err in denying him this credit.

In light of our disposition under Rule 2.26, we find it unnecessary to address Greening's additional argument that Iowa Code section 903A.5 (2005) mandates a credit.

***B. Denial of credit for time served at the Harbor of Hope Residential and Rehabilitation Center***

Greening next argues he should have been given credit for time he spent at the Harbor of Hope Residential and Rehabilitation Center. He contends Iowa Code section 907.3(3) authorizes such a credit. That provision states in pertinent part:

By record entry at the time of or after sentencing, the court may suspend the sentence and place the defendant on probation upon such terms and conditions as it may require including commitment to an alternate jail facility or a community correctional residential treatment facility to be followed by a term of probation as specified in section 907.7, or commitment of the defendant to the judicial district department of correctional services for supervision or services under section 901B.1 at the level of sanctions which the district department determines to be appropriate and the payment of fees imposed under section 905.14. A person so committed who has probation revoked shall be given credit for such time served.

By its terms, the statute refers to placement of a defendant "on probation" and specifies the time frame as "at the time of or after sentencing." *Id.* Greening concedes he was not on probation and he had yet to be sentenced when he was at the Harbor of Hope facility. Based on these concessions, we conclude section 907.3(3) is inapplicable and Greening is not entitled to a credit under this provision.

We affirm Greening's judgment and sentence.

**AFFIRMED.**