

**IN THE COURT OF APPEALS OF IOWA**

No. 2-1189 / 12-0618  
Filed February 27, 2013

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

**vs.**

**DAVID HAL CALVIN,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Robert B. Hanson,  
Judge.

David Calvin contends the district court imposed an illegal sentence upon  
his conviction second-degree theft as a habitual offender. **AFFIRMED IN PART,  
REVERSED IN PART, AND REMANDED FOR RESENTENCING.**

Mark C. Smith, State Appellate Defender, and Martha J. Lucey, Assistant  
Appellate Defender, for appellant.

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

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

**DANILSON, J.**

David Calvin contends the district court imposed an illegal sentence upon his conviction of second-degree theft as a habitual offender. Calvin was entitled to credit for time served in the Mount Pleasant residential treatment center prior to sentencing. He was not entitled to credit for time served for time spent in jail for drug court violations prior to sentencing. Accordingly, we affirm in part, reverse in part, and remand for resentencing.

**I. Background Facts and Proceedings.**

On February 9, 2011, the State charged Calvin with theft in the second degree as a habitual offender (Count I), and harassment in the second degree (Count II) for acts occurring on November 29, 2009. Calvin filed notice that he intended to rely on intoxication to negate specific intent.

A guilty plea was scheduled. Calvin was referred to the intensive supervision court, commonly referred to as “drug court.” Calvin entered a guilty plea on March 24, 2011. The *Alford* plea agreement<sup>1</sup> provided that Calvin would enter a guilty plea to theft in the second degree as a habitual offender and enter drug court. Upon successful completion of the drug court program, the parties would make a joint recommendation for a suspended sentence. If Calvin was unsuccessful in the program, the parties would agree to prison. The State agreed to dismiss Count II and another Polk County case.

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<sup>1</sup> *North Carolina v. Alford*, 400 U.S. 25, 37-38 (1970) (allowing a defendant to make a voluntary and intelligent decision to plead guilty to a crime without admitting participation in the underlying facts that constitute the crime); see *State v. Klawonn*, 609 N.W.2d 515, 520-21 (Iowa 2000) (discussing *Alford* plea).

Calvin's intensive supervision court plea agreement states, in part, "Defendant agrees and understands that violation of Drug Court rules may result in immediate arrest. Serious violations that do not result in Defendant being removed from the program may result in short term jail stays as a penalty for breaking the rules."

Calvin also signed a contract, which states in part:

I agree to enter Intensive Supervision Court (Drug Court), and, by so doing, I understand I will have certain obligations and responsibilities. I will have to follow the orders given my by the judge, my probation officer, TASC, Drug Court staff and/or other persons involved in Drug Court.

.....

I understand my responsibilities are:

.....

4. I must follow the treatment plan developed by the treatment coordinator or provider;

.....

11. I must follow the directives given me; if I fail to do so, sanctions may be imposed upon me which include, but are not limited to: . . . (g) [a] period of incarceration as determined by the judge.

12. I must remain drug free and my failure to do so may result in . . . incarceration; termination from Drug Court.

.....

16. Failure to comply with any point of this contract may result in a warrant being issued for my immediate arrest.

On March 25, 2011, an order for treatment was filed requiring Calvin to be transported to Iowa Residential Treatment Center—Mount Pleasant. He was to comply with all terms and conditions of the facility. The record does not indicate how long Calvin was there.

On May 19, 2011, Calvin appeared in court after being arrested for a violation of the drug court release agreement. A hearing was scheduled for the

next day. Calvin was released from jail and transported to Harbor of Hope. Calvin was ordered to comply with the facility's terms and conditions.

On September 2, 2011, Calvin was found in contempt for violating drug court rules. The court ordered Calvin to be in the Polk County jail for five days. He was released from jail on September 6, 2011.

On September 22, 2011, the court issued a warrant for Calvin's arrest for violating the terms of drug court. Calvin was arrested on March 13, 2012. On March 14, 2012, the court ordered Calvin held without bond and scheduled a hearing for March 16, 2012.

On March 16, 2012, Calvin was revoked from the drug court program. He was held without bond pending the sentencing hearing. On March 22, 2012, the court ordered Calvin to be incarcerated for a period not to exceed fifteen years. The court specifically ordered that Calvin would receive no credit for any time he served while under supervision of the drug court from March 25, 2011, to March 16, 2012. Calvin appeals the denial of credit for time served.

## **II. Scope and Standard of Review.**

We review the trial court's application of pertinent sentencing statutes for correction of errors at law. *State v. Hawk*, 616 N.W.2d 527, 528 (Iowa 2000).

## **III. Discussion.**

Calvin contends the district court erred in failing to give him credit for time he spent in the Mount Pleasant residential treatment center and jail before March 16, 2012. He concedes the days he spent in jail for contempt (September 2-6, 2011) were properly excluded. See *State v. Mott*, 731 N.W.2d 392, 394 (Iowa 2007) (noting that "punishment for contempt" is not criminal in nature, and is

separate from criminal conviction for assault). He argues, however, that he is entitled to credit for other jail time served and for the time he spent in the residential treatment facility.

Iowa Rule of Criminal Procedure 2.26(1)(f) states, “The defendant shall receive full credit for time spent in custody *on account of the offense for which the defendant is convicted.*” (Emphasis added.) Any jail time was “a penalty” for rule violations under his drug court plea and contract—not “on account of the offense for which [he] was convicted.” This time spent is equivalent to time spent for contempt of court.

However, we agree with Calvin that he is entitled to credit for the time he spent in the Mount Pleasant residential treatment center. See *State v. Capper*, 539 N.W.2d 361, 367 (Iowa 1995) (crediting time spent at the Iowa Medical and Classification Center), *abrogated on other grounds by Hawk*, 616 N.W.2d 527 (Iowa 2000). Section 903A.5 provides that “[i]f an inmate was confined to a county jail or other correctional or mental facility *at any time prior to sentencing* . . . the inmate shall be given credit for the days already served upon the term of the sentence.”<sup>2</sup> (Emphasis added.) See *State v. Rodenburg*, 562

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<sup>2</sup> The sentence in section 903A.5 in its entirety states:

If an inmate was confined to a county jail or other correctional or mental facility at any time prior to sentencing, or after sentencing but prior to the case having been decided on appeal, because of failure to furnish bail or because of being charged with a nonbailable offense, the inmate shall be given credit for the days already served upon the sentence.

We conclude the modifier “because of failure to furnish bail or because of being charged with a nonbailable offense” is intended to distinguish confinement for the instant offense and confinement for contempt or other offenses. It is not intended to require the defendant to be in custody at the county jail before placement at a correctional institute or mental facility to receive credit. An inmate is not confined to either a correctional institute or mental facility *because of* failure to furnish bail or facing a nonbailable charge. Furthermore, individuals in custody, but not in the custody of the department of

N.W.2d 186, 189 (Iowa 1997) (concluding credit was not proper for a private hospital, but acknowledging that the “statutory words are clear and unambiguous” and “allow credit for time served in state correctional institutions or detention facilities”).

The facility at Mount Pleasant is a correctional facility pursuant to Iowa Code sections 904.102(6) and 904.204, and also serves as a state mental health institute as provided by section 226.1 under the supervision of the department of corrections.

Calvin was not afforded credit for the time he spent in the Mount Pleasant residential treatment center by the district court’s sentencing order to which he was entitled. Accordingly we affirm in part, reverse in part, and remand for resentencing.

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR RESENTENCING.**

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corrections, are placed into the custody of the sheriff if they are unable to post bail or are charged with non-bailable offenses. See Iowa Code §§ 356.2, 331.653(35). To reach the contrary conclusion would also create inconsistencies with the result reached in *Anderson v. State*, 801 N.W.2d 1, 5 (Iowa 2011), where after sentencing, credit was afforded to a defendant who was not in physical custody, but who was committed to the department of correctional services for “supervision or services” under Iowa Code sections 907.3(3) and 901B.1.