

IN THE SUPREME COURT, STATE OF WYOMING

2026 WY 97

APRIL TERM, A.D. 2026

September 3, 2026

YZAIL ASHTON GAUNA,

Appellant
(Defendant),

v.

S-26-0007, S-26-0008

THE STATE OF WYOMING,

Appellee
(Plaintiff).

*Appeal from the District Court of Laramie County
The Honorable Thomas T.C. Campbell, Judge*

Representing Appellant:

Office of the State Public Defender: Patricia L. Bennett, Wyoming State Public Defender, Kirk A. Morgan, Chief Appellate Counsel.

Representing Appellee:

Keith G. Kautz, Attorney General; Jenny L. Craig, Deputy Attorney General; Kristen R. Jones, Senior Assistant Attorney General; Holli J. Welch, Senior Assistant Attorney General.

Before BOOMGAARDEN, C.J., and GRAY, FENN, JAROSH, and HILL, JJ.

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BOOMGAARDEN, Chief Justice.

[¶1] Cheyenne Police Department officers arrested Yzail Ashton Gauna for felony offenses he committed during a traffic stop. At the time of his arrest, Mr. Gauna had an active arrest warrant in another felony case, and was also on probation in an unrelated misdemeanor matter. While the two separate felony cases were pending, the circuit court revoked his probation and imposed the underlying misdemeanor sentence. Mr. Gauna later pleaded guilty to select charges in both felony cases and sought credit for most of the days he was in custody between his arrest and sentencing. The State argued he was only entitled to credit for the days he was in custody following completion of the misdemeanor sentence. The district court agreed with the State and awarded Mr. Gauna 64 days of credit. Mr. Gauna appeals, and we affirm.

ISSUE

[¶2] Mr. Gauna raises the single issue of whether his sentence was illegal for failure to properly award credit for presentence confinement.

FACTS

[¶3] In December 2022, Mr. Gauna pleaded guilty in circuit court to misdemeanor domestic battery and misdemeanor interference with a peace officer. On each count, the circuit court sentenced Mr. Gauna to 307 days' imprisonment with 127 days' credit and the remainder suspended in favor of supervised probation, with the sentences to run consecutively. In April 2023, the State moved to revoke Mr. Gauna's probation.

[¶4] In November 2023, the State charged Mr. Gauna with misdemeanor domestic battery and later amended the charge to felony domestic battery and added a charge of aggravated assault and battery against a pregnant woman. The circuit court issued an arrest warrant.

[¶5] On April 5, 2024, officers with the Cheyenne Police Department arrested Mr. Gauna during a traffic stop. During the stop, Mr. Gauna got into a physical altercation with the officers and tased one officer. The State charged Mr. Gauna with two counts of interference with a peace officer and one count of failure to wear a seatbelt.

[¶6] Following the traffic stop, Mr. Gauna had cases in three separate dockets: 1) his previous misdemeanor and pending probation revocation in circuit court (Docket 1663); 2) his felony charges for domestic battery and aggravated assault on a pregnant woman in district court (Docket 898); and 3) his felony charges for interference with a peace officer and misdemeanor failure to wear a seatbelt in district court (Docket 878).

[¶7] Mr. Gauna eventually posted bond in all matters and was released on June 26, 2024. In August 2024, the State petitioned to revoke Mr. Gauna's bond in Docket 898 based on an alleged violation of a bond condition, and the district court issued a bench warrant. The State also petitioned to revoke Mr. Gauna's probation in Docket 1663, which the circuit court had previously reinstated. In September 2024, the State sought and obtained another bench warrant in Docket 878 based on Mr. Gauna's failure to appear for a pretrial conference. Mr. Gauna was arrested on October 10, 2024, and was once again in custody with matters pending in Dockets 1663, 878, and 898.

[¶8] On January 16, 2025, Mr. Gauna admitted to probation violations in Docket 1663 and the circuit court revoked his probation and imposed the underlying sentence. It imposed the remaining 105 days on each count, with the counts to be served consecutively, and with credit for the 99 days he had spent in confinement since his October 10, 2024 arrest.¹ Mr. Gauna then served the remaining 111 days in Docket 1663 until May 7, 2025, but remained in custody with his two district court dockets still pending.

[¶9] Mr. Gauna and the State eventually reached a combined plea agreement in Dockets 878 and 898. Mr. Gauna agreed to enter *Alford* pleas² to one count of interference with a peace officer in Docket 878 and one count of domestic battery in Docket 898. The State agreed to dismiss all remaining counts in both dockets.

[¶10] At sentencing, the parties disputed the proper amount of credit to award Mr. Gauna. The State argued Mr. Gauna was entitled to 56 days of credit, its calculation of the time between the completion of his sentence in Docket 1663 and his July 2, 2025 sentencing. Mr. Gauna argued he was entitled to 319 days, all of the time he spent in custody from his April 5, 2024 arrest to his July 2, 2025 sentencing. He alternatively argued he was entitled to at least 208 days using the same calculation but omitting the 111 days after the circuit court imposed his underlying sentence in Docket 1663.

[¶11] The district court sentenced Mr. Gauna to four to eight years' imprisonment in each docket, with the sentences to run concurrently. It awarded 56 days' credit in each docket based on the State's argument but invited Mr. Gauna to file a motion with a more detailed explanation of his position. Mr. Gauna filed a motion to correct an illegal sentence under W.R.Cr.P. 35(a). He conceded he was not entitled to the 111 days between the circuit court's imposition of his underlying sentence on the misdemeanor and

¹ The circuit court had previously credited Mr. Gauna for his time spent in custody between his April 5, 2024 arrest and his June 26, 2024 release when it revoked and reinstated his probation in July 2024.

² "An *Alford* plea involves the court's acceptance of the plea when the defendant simultaneously professes his innocence[.]" *State v. Boni*, 2026 WY 57, ¶ 7 n.1, 589 P.3d 1271, 1273 n.1 (Wyo. 2026) (quoting *Fuentes v. State*, 2026 WY 36, ¶ 1 n.1, 586 P.3d 1058, 1060 n.1 (Wyo. 2026)). *See generally North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

the completion of that sentence. However, he argued he was entitled to credit on every other day of confinement between his initial April 2024 arrest and his July 2025 sentencing, for a total of 236 days. He argued alternatively that the State had miscalculated his credit even under its own allocation of days and he was entitled to 64 days' credit.

[¶12] After a hearing, the district court granted Mr. Gauna's motion in part and denied it in part. Based on the State's concession, it increased Mr. Gauna's credit to 64 days; it otherwise rejected Mr. Gauna's arguments and his request for 236 days' credit. After the court entered a judgment and sentence in each matter, Mr. Gauna timely appealed. On his motion, we consolidated his appeals.

STANDARD OF REVIEW

[¶13] Mr. Gauna contends the district court did not award him proper credit against his sentences in Dockets 878 and 898. A sentence is illegal if it does not include proper credit. *Cruzen v. State*, 2023 WY 5, ¶ 11, 523 P.3d 301, 304 (Wyo. 2023). "Whether a sentence is illegal is a question of law that we review de novo." *Id.* (quoting *Newnham v. State*, 2021 WY 54, ¶ 3, 484 P.3d 1275, 1276 (Wyo. 2021)).

DISCUSSION

[¶14] Mr. Gauna argues he should be given credit for every day he "is not actively serving a sentence[.]" He concedes, as he did below, that he is not entitled to the 111 days from January 16, 2025 to May 7, 2025, when he was serving his sentence in Docket 1663 due to his probation revocation. However, he argues he is entitled to credit for every other day he served between his April 5, 2024 arrest and his July 2, 2025 sentencing.

[¶15] Whether a defendant is entitled to equal credit against concurrent sentences depends on whether the sentences are in the same or separate cases:

When concurrent sentences are imposed in a single case, credit for time served must be applied equally against both sentences. However, when a district court imposes concurrent sentences in separate cases, the district court is not required to award credit for time served equally against the separate cases. Instead, a criminal defendant is only entitled to the credit, against both the minimum and maximum sentences, for time spent in confinement prior to sentencing in the separate cases, if that confinement was due solely to a financial inability to post bond while the defendant awaited disposition.

Said v. State, 2024 WY 58, ¶ 15, 549 P.3d 138, 141 (Wyo. 2024) (citation modified).

[¶16] In *Said*, Mr. Said was initially charged with felony theft and spent 15 days in jail before being released on bond. 2024 WY 58, ¶ 4, 549 P.3d at 139. He later failed to appear for his arraignment and the district court issued a warrant. *Id.* While the warrant was active, Mr. Said committed additional crimes during a traffic stop and the State charged him in a separate docket. *Id.*, ¶ 5, 549 P.3d at 139. He then spent another 100 days in custody before pleading guilty and was released pending sentencing. *Id.*, ¶ 6, 549 P.3d at 139. While awaiting sentencing, Mr. Said committed additional crimes, and the State arrested him and charged him in a third docket. *Id.*, ¶¶ 7–8, 549 P.3d at 139–40. One hundred fifty-three days later, the district court sentenced him under a new plea agreement, but only awarded the additional 153 days in one of the dockets. *Id.*, ¶ 11, 549 P.3d at 140.

[¶17] On appeal, Mr. Said argued he was entitled to credit for the additional 153 days against the other two dockets. *Id.*, ¶ 14, 549 P.3d at 141. We rejected his argument and explained he “was arrested for additional crimes he committed in separate dockets while awaiting sentencing in his other dockets. Because Mr. Said was not in custody solely because of his financial inability to post bond and his incarceration was caused by his additional criminal conduct, the district court did not err” when it declined to apply the 153 days to all three dockets. *Id.*, ¶ 17, 549 P.3d at 142.

[¶18] Mr. Gauna’s case is similar. While his felony matters currently on appeal (Dockets 878 and 898) were pending, he was also in custody for his probation violations in Docket 1663. The circuit court reinstated his probation while he was released on bond before his October 2024 arrest, and in doing so credited all his detention from April 2024 to June 2024 toward his underlying sentence. In January 2025, the circuit court revoked his probation in Docket 1663 and imposed the remainder of underlying sentence. It credited all his detention from his October 2024 arrest to his January 2025 revocation. Mr. Gauna then served the remainder of his underlying sentence and completed it on May 7, 2025. He then received every day from May 8, 2025 until his sentencing as credit toward his concurrent sentences in Dockets 878 and 898.³

[¶19] Mr. Gauna concedes “that to a great extent,” his position conflicts with *Said*, but argues his case is distinguishable. He points out that unlike Mr. Said, he did not commit additional crimes while released on bond. He also notes that his sentence in Dockets 878 and 898 could not have been made concurrent with Docket 1663 because he had

³ Because Mr. Gauna’s concurrent sentences in Dockets 878 and 898 were in separate dockets, the district court was not required to credit both sentences equally. *Said*, 2024 WY 58, ¶ 15, 549 P.3d at 141. However, it was within the court’s discretion to apply the credit against both sentences equally. *See Cruzen*, 2023 WY 5, ¶ 17, 523 P.3d at 305 (explaining a trial court has discretion to award credit against separate sentences even if it is not required to do so).

completed his sentence in Docket 1663 prior to his sentencing in Dockets 878 and 898. These distinctions are irrelevant. Like in *Said*, the key reason Mr. Gauna is not entitled to credit for days he was in custody before May 8, 2025 is because he was not being held for those days “due solely to a financial inability to post bond” in Dockets 878 and 898. 2024 WY 58, ¶ 15, 549 P.3d at 141. Instead, he remained in custody for his probation revocation in Docket 1663. Though his underlying sentence was not imposed in Docket 1663 until January 16, 2025, he received credit for all his prior detention against that sentence. Mr. Gauna is not entitled to credit those same days against his sentence in Dockets 878 and 898.

[¶20] Affirmed.