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Court of Appeals of New Mexico
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3 Plaintiff-Appellee,

M. Reynolds

4 v. **No. A-1-CA-42303**

5 | DARIN MUÑOZ,

6 Defendant-Appellant.

7 | APPEAL FROM THE DISTRICT COURT OF LEA COUNTY

8 | Efren A. Cortez, District Court Judge

9 | Raúl Torrez, Attorney General

10 | Santa Fe, NM

11 | Christa Street, Assistant Solicitor General

12|| Albuquerque, NM

13 for Appellee

14 | Bennett J. Baur, Chief Public Defender

15 | Maria A. Pomorski, Assistant Appellate Defender

16 | Santa Fe, NM

17 for Appellant

MEMORANDUM OPINION

19 | MEDINA, Chief Judge.

20 {1} Defendant appeals the district court's amended order revoking probation and
21 commitment (Amended Order) to the New Mexico Corrections Department
22 (NMCD), on the ground that he is entitled to an additional 180 days confinement
23 credit for time served at the Lea County Detention Center (LCDC) from May 7, 2018

1 to November 2, 2018. We agree with Defendant and remand for the district court to
2 resentence accordingly.

3 **BACKGROUND**

4 {2} Defendant pled guilty to one count of trafficking methamphetamine by
5 possession with intent to distribute, contrary to NMSA 1978, Section 30-31-
6 20(A)(3) (2006). Defendant's conviction, a second degree felony, exposed him to a
7 nine year sentence. *See* § 30-31-20(B)(1) (identifying a first trafficking offense as a
8 second degree felony); NMSA 1978, § 31-18-15(A) (2007, amended 2025)
9 (providing that the basic sentence for a second degree felony is nine years
10 imprisonment). The district court sentenced Defendant to nine years at LCDC, with
11 ninety months suspended, and five years of probation. Defendant received 270 days
12 of preconfinement credit and served the remaining confinement balance of nine
13 months and four days at LCDC.

14 {3} Upon his release from LCDC, beginning in 2018, Defendant violated the
15 terms of his probation a number of times. Following revocation of Defendant's
16 probation on May 7, 2018, the district court imposed "a term of nine (9) years
17 imprisonment, followed by a two (2) year period of parole." Relevant to this appeal,
18 the district court suspended all but 180 days of the nine-year sentence and ordered
19 Defendant to serve this 180-day "sanction" at LCDC, followed by a five-year term

1 of probation.¹ Defendant served 180 days in LCDC from May 7, 2018 to November
2 2, 2018.

3 {4} On April 8, 2024, the district court again revoked Defendant's probation. The
4 district court sentenced Defendant to a term of nine years in the custody of the
5 NMDC to be followed by a period of parole. The district court awarded Defendant
6 "four years, eleven months and twenty-one days . . . as set forth in the Confinement
7 Credit Attachment" but did not award Defendant 180 days of credit for time served
8 at LCDC from May 7, 2018 to November 2, 2018. The Confinement Credit
9 Attachment specifically stated that no credit be given for the 180 days served from
10 May 7, 2018 to November 2, 2018.

11 **DISCUSSION**

12 **I. Defendant Is Entitled to 180 Days Confinement Credit for Time Served 13 at LCDC From May 7, 2018 to November 2, 2018**

14 {5} Defendant argues that he is entitled to the 180 days of confinement credit he
15 served after his first probation violation and that the denial of this credit
16 "effectively—and illegally—increased [his sentence] by six months." The State
17 responds that "it appears that the 180 days of imprisonment that Defendant served
18 in 2018 was part of his sentence, [and] he cannot be required to serve that time again

¹Defendant's underlying sentence had subsequently been increased to ten years due to the addition of a habitual offender enhancement. This is not at issue in this appeal.

1 without improperly increasing his sentence.” Thus, the State does not oppose the
2 relief Defendant seeks on appeal. We review the legality of a sentence de novo. *State*
3 *v. Williams*, 2006-NMCA-092, ¶ 4, 140 N.M. 194, 141 P.3d 538.

4 {6} We turn to NMSA 1978, Section 31-21-15(B) (1989, amended 2016), which
5 sets out the sentencing court’s authority upon a defendant’s violation of probation.
6 It reads:

7 The court shall then hold a hearing, which may be informal, on the
8 violation charged. If the violation is established, the court may continue
9 the original probation or revoke the probation and either order a new
10 probation with any condition provided for in [NMSA 1978,] Section 31-
11 20-5 [(2003, amended 2025)] or [Section] 31-20-6 [(2007)] or require
12 the probationer to serve the balance of the sentence imposed or any
13 lesser sentence. If imposition of sentence was deferred, the court may
14 impose any sentence that might ordinarily have been imposed, but credit
15 shall be given for time served on probation.

16 In addition, “a court may not increase a valid sentence once a defendant begins
17 serving that sentence.” *State v. Rapchack*, 2011-NMCA-116, ¶ 16, 150 N.M. 716,
18 265 P.3d 1289.

19 {7} Defendant began serving his sentence on May 18, 2016. Multiple subsequent
20 violations of the terms of his probation resulted in various periods of time served at
21 LCDC, including the May 7, 2018 to November 2, 2018 period at issue here. There
22 is no dispute that the four years, eleven months, and twenty-one days of confinement
23 credit awarded in the district court’s Amended Order excluded credit for the 180
24 days Defendant spent in LCDC from May 7, 2018 to November 2, 2018. As

1 Defendant was confined during this period pursuant to his original sentence, he is
2 entitled to confinement credit for this time served. *See id.* ¶ 16. To hold otherwise
3 would increase Defendant's basic sentence beyond the maximum period authorized
4 by statute. *See §§ 30-31-20(B)(1), 31-18-15(A), -21-15(B).*

5 **CONCLUSION**

6 {8} We remand for the district court to resentence accordingly and consistent with
7 this opinion.

8 {9} **IT IS SO ORDERED.**

9
10 
JACQUELINE R. MEDINA, Chief Judge

11 **WE CONCUR:**

12 
13 **J. MILES HANISEE, Judge**

14 
15 **KATHERINE A. WRAY, Judge**