

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

STATE OF SOUTH DAKOTA,)	ORDER DIRECTING ISSUANCE OF
Plaintiff and Appellee,)	JUDGMENT OF REVERSAL
)	AND REMAND
vs.)	
)	#29913
SHANNON HANSEN AKA SHANNON)	
BLACKBEAR,)	
Defendant and Appellant.)	

The Court considered all of the briefs filed in the above-entitled matter, together with the appeal record, and concluded pursuant to SDCL 15-26A-87.1(C)(2), that the judgment from which the appeal is taken should be reversed on the ground that it was clearly contrary to settled South Dakota law or federal law binding upon the states.

Hansen received a two-year penitentiary sentence on a conviction for grand theft. The court provided a pretrial credit to Hansen for the 66 days he was in custody following his initial arrest.

During the proceedings, Hansen was released and arrested on two separate cash bond bench warrants for violating the conditions of his pretrial release on two occasions. Hansen was unable to post bond on either bench warrant. Hansen remained in custody on the

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first bench warrant from November 2, 2020, to January 21, 2021, and from December 6, 2021, to January 20, 2022 on the later bench warrant, for a total of 123 days.

During the proceedings, Hansen was charged with felony escape arising from an incident unrelated to the original charges. Hansen was arrested on a cash only warrant of arrest and held from April 13, 2021, until June 8, 2021 on the new charge for escape. The escape charge was dismissed as part of a plea agreement permitting Hansen to plead guilty to the grand theft arising from the original incident leading to the original charges. The plea agreement did not provide for Hansen to receive credit for time served on the new charge for escape.

"Where incarceration results from a defendant's financial inability and failure to post bond The Fourteenth Amendment equal protection clause requires that credit be given for all presentence custody that results from indigency." *State v. Ainsworth*, 2016 S.D. 40, ¶ 5, 879 N.W.2d 762, 764. "The appointment of counsel is sufficient to establish a defendant as indigent prior to sentencing, and such indigency dates from the time the court approves an application for court appointed counsel." *Id.* (quoting *State v. Green*, 524 N.W.2d 613, 614 (S.D. 1994)).

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The circuit court erred when it failed to provide Hansen with the 123 days pretrial credit for his time in custody relating to the original charges, after being appointed counsel, and was unable to post bond because of his indigency. However, Hansen is not entitled to credit for the additional time in custody on the new charge for escape.

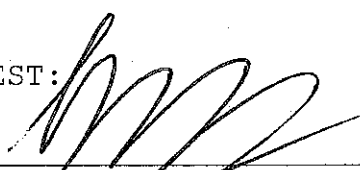
now, therefore, it is

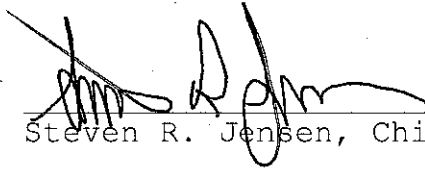
ORDERED that the judgment of conviction and sentence is reversed and remanded for the court to amend the judgment of conviction and sentence to grant a total pretrial credit of 189 days on his two-year sentence for grand theft.

DATED at Pierre, South Dakota, this 7th day of September, 2022.

BY THE COURT:

ATTEST:


Clerk of the Supreme Court
(SEAL)


Steven R. Jensen, Chief Justice

PARTICIPATING: Chief Justice Steven R. Jensen and Justices Janine M. Kern, Mark E. Salter, Patricia J. DeVaney and Scott P. Myren.

SUPREME COURT
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FILED

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Clerk