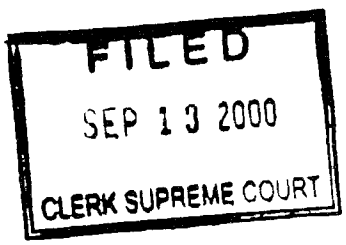
IN THE COURT OF APPEALS OF IOWA

No. 0-465 / 99-1145
Filed September 13, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

STEVEN DALE KESTERSON,
Defendant-Appellant.



Appeal from the Iowa District Court for Lee County, William L. Dowell, Judge.

Defendant appeals from the sentence entered following his conviction of conspiracy to commit escape. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Stephan J. Japuntich, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kristin Mueller and Robert J. Glaser, Assistant Attorneys General, Michael Short, County Attorney, and David A. Andrusyk, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

ZIMMER, J.

Steven Kesterson appeals from the sentence entered following his conviction of conspiracy to commit escape. He contends the district court erred by failing to grant him credit for time served in the judgment entry. We affirm.

While serving time in the Iowa State Penitentiary for convictions which occurred in Kansas, Kesterson conspired to escape. He enlisted the help of other inmates in digging a tunnel out of the facility. On October 7, 1998, corrections officials uncovered the plan and placed Kesterson in more restrictive custody at the prison.[1] On February 12, 1999, the State charged Kesterson with conspiracy to commit escape pursuant to Iowa Code sections 706.1 and 719.4 (1997). Trial began on May 24, 1999. The jury returned a guilty verdict. On June 25, 1999, the district court sentenced Kesterson to an indeterminate five-year term of imprisonment to be served consecutively to Kesterson's existing sentences, pursuant to Iowa Code section 901.8. At sentencing, Kesterson did not claim entitlement to credit for time served in more restrictive custody, and the district court did not address credit in its judgment entry.

Kesterson appeals. Kesterson claims the district court erred by failing to include a statement in the judgment entry regarding credit for time he spent in more restrictive confinement in the months between the discovery of his escape attempt and his sentencing on the escape charge.

I. Scope of Review. Our review of a challenge to a district court's application of a sentencing statute is for corrections of errors at law. *State v. Stephenson*, 608 N.W.2d 778, 784 (Iowa 2000) (citations omitted).

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[1] The record does not disclose the nature and extent of Kesterson's disciplinary confinement.

II. Credit for Time Served. In support of his argument, Kesterson cites Iowa Code sections 901.6 and 903A.5. The Iowa Supreme Court recently rejected the same contention in *State v. Hawk,* ____N.W.2d ____, ____ (Iowa 2000). Sections 901.6 and 903A.5 do not require a judicial accounting of credit for time served. *Id.*

Furthermore, we question whether an inmate who commits a crime while serving another sentence would be *entitled* to credit for time served in more restrictive confinement, even if the district court were required to make such an accounting. To be granted credit for presentence time served, the defendant must have been detained for the offense of which he ultimately is convicted. *Walton v. State,* 407 N.W.2d 588, 591 (Iowa 1987). Kesterson was not detained in the Iowa State Penitentiary because of the escape charge, the offense of which he was ultimately convicted. Furthermore, section 903A.5 only entitles an inmate to credit if confined *"because of failure to furnish bail or because of being charged with a nonbailable offense."* Kesterson was confined because of another conviction, not his failure to furnish bail. *See State v. Johnson,* 167 N.W.2d 696, 701 (Iowa 1969) (making same distinction). Kesterson was not entitled to credit for any time served in disciplinary confinement as a result of his conspiracy to escape.[2] The district court committed no error in failing to include a statement of credit in the judgment entry.

AFFIRMED

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[2] In a 1999 amendment to section 903A.5, the legislature made this policy explicit: "[I]f a person commits any offense while confined in a county jail or other correctional or mental health facility, the person shall not be granted jail credit for that offense. . . ." *See* Iowa Code § 903A.5 (1999); *see also* 1999 Iowa Acts ch. 12, § 18; 1999 Iowa Acts ch. 182, § 4.