SUMMARY
August 24, 2023

2023COA75

No. 21CA0137, *People v. Bonde* — Criminal Law — Sentencing — Credit for Presentence Confinement — Community Corrections Programs — Credit Against Term of Confinement

A division of the court of appeals considers whether two statutes, section 18-1.3-405 and 18-1.3-301(1)(j), C.R.S. 2022, entitle an offender who served time in a nonresidential community corrections program to credit for the entire period of that time if the offender's sentence to the community corrections program is later revoked. Relying in part on a decision of the Colorado Supreme Court, *People v. Hoecher*, 822 P.2d 8 (Colo. 1991), the division concludes that neither statute so entitles such an offender to that credit.

COLORADO COURT OF APPEALS **2023COA75**

Court of Appeals No. 21CA0137
Larimer County District Court Nos. 17CR223 & 17CR2989
Honorable Laurie K. Dean, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Ryan Wallace Bonde,

Defendant-Appellant.

SENTENCE AFFIRMED

Division IV
Opinion by JUDGE KUHN
Fox and Welling, JJ., concur

Announced August 24, 2023

Philip J. Weiser, Attorney General, Brock J. Swanson, Senior Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Patrick R. Henson, Alternate Defense Counsel, Andrew Gargano, Alternate Defense Counsel, Denver, Colorado, for Defendant-Appellant

¶ 1 Defendant, Ryan Wallace Bonde, appeals the sentence imposed by the district court after it terminated his sentence to a community corrections program and resentenced him to the custody of the Colorado Department of Corrections (CDOC). Bonde contends that he was entitled to a deduction from his CDOC sentence for the number of days he served in a nonresidential community corrections setting. In the course of advancing this argument, Bonde urges us to depart from the explicit holding of *People v. Hoecher*, 822 P.2d 8 (Colo. 1991), because he asserts that the rationale on which the supreme court's holding rests has eroded — if not worn away entirely — in the intervening thirty years since it was decided. Because we conclude only the supreme court may revisit *Hoecher*'s explicit holding, we decline this invitation and, therefore, affirm.

I. Background

¶ 2 As part of a plea agreement to resolve two cases, Bonde was sentenced to concurrent, four-year sentences in a community corrections program. Roughly six months later, Bonde successfully completed the residential portion of these sentences and was

transferred to nonresidential community supervision to complete the remainder of his time.

¶ 3 However, after spending 355 days in the nonresidential portion of the program, Bonde's placement in the community corrections program was terminated after he was arrested on new charges. In its termination report, the community corrections program calculated that Bonde had earned 153 days of earned time credits for his time in both the residential and nonresidential portions of the program.

¶ 4 The district attorney sought resentencing under section 18-1.3-301(1)(e), C.R.S. 2022. Before he was resentenced, Bonde requested that his 355 days of nonresidential time be deducted from his CDOC sentences under section 18-1.3-301(1)(j).

¶ 5 In a written order, the district court denied Bonde's request. The court ruled that section 18-1.3-301(1)(j) only entitled Bonde to good time or earned time credits for his nonresidential time, not a sentence deduction for the entire amount of time he had served.

¶ 6 Bonde later renewed his request at the sentencing hearing. The district court again denied his request but noted on his

mittimus both the 153 days of "earned time credit" calculated by community corrections and the 355 days of nonresidential time.[1]

II. Analysis

¶ 7 On appeal, Bonde contends that the district court erred because he is entitled to a 355-day sentence deduction for his nonresidential time under either (1) the presentence-confinement statute, section 18-1.3-405, C.R.S. 2022; or (2) the community corrections statute, section 18-1.3-301(1)(j). We disagree.

A. Standard of Review

¶ 8 We review de novo whether Bonde is entitled to credit for time served in a nonresidential community corrections program. *See Fransua v. People*, 2019 CO 96, ¶ 11.

¶ 9 We also review de novo questions regarding the interpretation of a statute. *Id.* When interpreting statutes, we strive to give effect to the legislature's intent. *People v. Pimble*, 2015 COA 112, ¶ 6. We examine the plain and ordinary meaning of the statute's words, read them in context, and attempt to give them consistent and

[1] The court also credited Bonde with presentence confinement credit for his time in jail and residential community corrections on the amended mittimus for each case.

sensible effect in light of the statute as a whole. *Id.* Most importantly, we apply unambiguous statutory text as written, without resorting to other aids of statutory construction. *Id.*

B. Bonde is Not Entitled to Nonresidential Confinement Credit

¶ 10 Section 18-1.3-405 entitles an offender who was "confined for an offense prior to the imposition of sentence for said offense" to credit "for the entire period of such confinement." Bonde argues that he was entitled to 355 days of presentence confinement credit (PSCC) because he was "confined" — according to *Hoecher*, 822 P.2d at 12-13 — while serving nonresidential time.[2]

¶ 11 Bonde readily admits *Hoecher*'s explicit holding — that an offender "is not entitled upon resentencing to credit for that part of the community correctional sentence served as a nonresident." *Id.* at 13. But Bonde argues that it is the *reasoning* of *Hoecher*, rather than this explicit language, that binds this court. In particular, he points to the following language from *Hoecher*:

---

[2] The People concede that, even if Bonde failed to preserve this issue, his claim for PSCC is "cognizable under Crim. P. 35(a)" and thus may be raised "at any time." *People v. Fransua*, 2016 COA 79, ¶ 17, *aff'd*, 2019 CO 96.

> Because an offender serving out a community correctional sentence on nonresidential status is free to function in the community in a manner unencumbered by most of the constraints associated with confinement, we believe that a community correctional offender's entitlement to credit for time served on nonresidential status should be resolved in the same manner as a parolee's claim for credit for the time served on parole.

Id. According to Bonde, *Hoecher* stands for the proposition that PSCC entitlement for nonresidential community corrections time *must* track that of parolees. Bonde then says that *Hoecher*'s explicit holding was based on the fact that, at the time it was decided, parolees who later had their parole revoked were not entitled to PSCC for their time spent on parole. *See* §§ 17-22.5-203(1), -303(7), C.R.S. 1991; *Hoecher*, 822 P.2d at 13. But now, Bonde argues, for offenders like him who committed only a nonviolent felony offense, parolees would be entitled to PSCC for this time. *See* § 17-22.5-303(7), C.R.S. 2022. Thus, following *Hoecher*'s supposed reasoning, he says he's entitled to PSCC for his nonresidential time.

¶ 12 We're not persuaded. For one, Bonde argues that we should apply the ratio decidendi theory of stare decisis — that this court can or must follow our supreme court's necessary reasoning in a

case even when that reasoning would lead to an outcome contradictory to the court's explicit holding. He cites no Colorado support for this premise, and we are not aware of any. To the contrary, our supreme court has said that it "alone can overrule [its] prior precedents concerning matters of state law," even when "the evolution of legal principles . . . has not only left the doctrinal footings of [a] . . . rule weaker[,] it has completely undercut them, leaving the rule itself without any theoretical support whatsoever." *People v. Novotny*, 2014 CO 18, ¶ 26; *see also, e.g.*, *People v. Martinez*, 254 P.3d 1198, 1202 (Colo. App. 2011) ("[W]e are bound by our supreme court's explicit holdings . . . .").

¶ 13 But even if we could ignore *Hoecher*'s explicit holding in favor of its reasoning, we don't buy Bonde's reading of the case — that PSCC entitlement for a nonresidential offender *must* be treated the same as that of a parolee. Contrary to this reading, the touchstone of *Hoecher*'s confinement analysis was rather whether an offender was "substantially restricted in his freedom of movement and range of activity." 822 P.2d at 12; *see Beecroft v. People*, 874 P.2d 1041, 1046 (Colo. 1994). We read *Hoecher* as doing no more than *analogizing* a nonresidential offender to a parolee to frame the

court's analysis, contextualize it within the statutory scheme, and elucidate the legislature's intent with regard to nonresidential offenders — not binding the outcome to how a parolee's time is treated. *See Hoecher*, 822 P.2d at 13.

¶ 14 Beyond his reliance on *Hoecher*, Bonde does not develop any argument regarding his entitlement to PSCC under section 18-1.3-405. For example, Bonde does not point to any liberty restraints faced by nonresidential offenders that show that they are "confined" within the meaning of the PSCC statute. *See Hoecher*, 822 P.2d at 12 ("A[] [nonresidential] offender . . . is not substantially different from . . . a parolee," who, though "subject to many restrictions 'not applicable to other citizens,'" still "enjoys a degree of liberty that enables him to 'do a wide range of things open to persons who have never been convicted of any crime,' including the freedom to 'be gainfully employed and . . . to be with family and friends and to form the other enduring attachments of normal life.'" (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972))). Nor does he argue that, since *Hoecher*, the legislature has revised the PSCC or community corrections statutes "to mandate that nonresidential

time served be counted as PSCC." *Pimble*, ¶ 12 (rejecting this argument).

¶ 15 We agree with Bonde that "the evolution of legal principles" regarding whether parolees are confined for PSCC purposes may have "left the doctrinal footings of [*Hoecher*] weaker." *Novotny*, ¶ 26. But ultimately, we conclude that only the supreme court may revisit *Hoecher*'s explicit holding. *Id.* We think this is true regardless of the similar liberty restraints faced by parolees and nonresidential offenders; regardless of whether the treatment of the latter should track the treatment of the former; and regardless of, as Bonde puts it, "the judicial change in view" regarding whether parolees are "confined" for the purposes of PSCC.

¶ 16 The supreme court explicitly held in *Hoecher* that when an offender "is sentenced to a community corrections facility . . . , is later placed on nonresidential status, and thereafter violates a rule or condition . . . , such offender is not entitled upon resentencing to credit for that part of the community correctional sentence served as a nonresident." 822 P.2d at 13; *see also Beecroft*, 874 P.2d at 1046. We accordingly conclude that Bonde was not entitled to

PSCC under section 18-1.3-405 for the 355 days he spent in the nonresidential community corrections program.

C. Bonde is Not Entitled to "Time Completed" Credit for Nonresidential Time

¶ 17 Even if not entitled to credit under section 18-1.3-405, Bonde further argues that his 355 days of nonresidential time must count as "time completed" credit under section 18-1.3-301(1)(j). We again disagree.

¶ 18 As relevant here, section 18-1.3-301(1)(j) says that

> any offender sentenced to the [CDOC] subsequent to placement in a community corrections program is entitled to credit against the term of confinement as described in section 17-27-104(9), C.R.S. [2022.] The court shall make a finding of the amount of such time credits and include such finding in the mittimus that orders the offender to be placed in the custody of the [CDOC]. The [CDOC] shall apply credits for residential and nonresidential time completed in a community corrections program in the same manner as credits for time served in a [CDOC] facility.

In turn, the referenced statute, section 17-27-104(9), says that

> [t]he administrator of any community corrections program shall document the number of days of residential and nonresidential time completed by each offender sentenced directly to the community corrections program by the court and the time

> credits granted to such offender pursuant to section 18-1.3-301(1)(i).

Following the reference again, section 18-1.3-301(1)(i) says that

> [a]n offender sentenced directly to a community corrections program . . . shall be eligible for time credit deductions from the offender's sentence not to exceed ten days for each month of placement upon a demonstration to the program administrator by the offender that the offender has made consistent progress in the following [enumerated] categories.

¶ 19 Bonde does not dispute that the phrases "credit against the term of confinement" and "time credits" in the first two sentences of section 18-1.3-301(1)(j) refer *only* to good time and earned time credits. *See* § 17-27-104(9); § 18-1.3-301(1)(i)(I); *People v. McCreadie*, 938 P.2d 528, 530-31 (Colo. 1997) (holding the same under these statutes' predecessors). Instead, Bonde argues that the last sentence of this provision speaks of a different kind of credit — a "credit[] for . . . nonresidential time completed" — that the CDOC "shall apply" to his sentence in the same manner as "credits for the time served" in a CDOC facility.

¶ 20 This argument lacks grounding in the statutory scheme. As noted, Bonde concedes that the first two sentences of section

18-1.3-301(1)(j) apply only to good time credits and earned time credits. Reading these sentences together, as we must, they say the court must make a finding about any such credits earned during an offender's community corrections time.

¶ 21 We can contrast this with Bonde's alleged third type of credit. Crucially, this statute doesn't actually say, as Bonde puts it, that "nonresidential offenders shall receive credit for time completed." Likewise, there is no language saying the court must note such "time completed credit" on an offender's mittimus. Rather, the plain language of this statute says only that the CDOC shall apply "credits" for time spent in community corrections in the same manner as time served in a CDOC facility.

¶ 22 In essence, Bonde's interpretation of "credits for . . . nonresidential time completed" seeks PSCC by another name. But section 18-1.3-301(1)(j) also refers to "credits for residential . . . time completed." Offenders, however, are already entitled to PSCC for residential time in the community corrections program. *Hoecher*, 822 P.2d at 12 ("A court [when resentencing] . . . should credit the offender for the time served as a resident of a community correctional facility."). And we've already determined that

nonresidential offenders aren't entitled to PSCC under controlling supreme court precedent. But when interpreting statutes, we seek to avoid such superfluities. *People v. Rediger*, 2018 CO 32, ¶ 22 ("[W]e may not construe a statute so as to render any statutory words or phrases superfluous.").

¶ 23 Given these incongruities in Bonde's interpretation, we think the plain text and context of the statute reveal a better interpretation of section 18-1.3-301(1)(j). Like a division of this court reasoned before us, we see the reference to "credits for . . . nonresidential time completed" in section 18-1.3-301(1)(j) as evidencing only the legislature's intent "to ensure that offenders receive earned time and good time credits based on time spent in both residential and nonresidential programs." *Pimble*, ¶ 12. Instead of creating a new class of time served credit, this provision on which Bonde relies — requiring the CDOC to apply such credits "in the same manner as credits for time served" in CDOC facilities — only instructs the CDOC to not discriminate between credits earned in community corrections and those earned while serving time in the CDOC.

¶ 24 Thus, we conclude that Bonde was not entitled to a 355-day deduction from his CDOC sentence for nonresidential time under the plain meaning of section 18-1.3-301(1)(j).

III. Disposition

¶ 25 The sentence is affirmed.

JUDGE FOX and JUDGE WELLING concur.