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should consider—in addition to looking to Thomas' reported income including interest, dividends, partnership income, and the guaranteed payment of $24,000 by the farm—the in-kind benefits that Thomas receives from the farm and the stored grain inventory.

## CONCLUSION

In conclusion, we find upon our de novo review of the record that the district court did not abuse its discretion by awarding Erin a $250,000 *Grace* award and by determining that the children's educational accounts were premarital. However, with respect to the child support calculation, we conclude that the district court erred in its determination of Thomas' income, and we remand the matter for a new income determination in accordance with this opinion.

AFFIRMED IN PART, AND IN PART REVERSED AND REMANDED WITH DIRECTIONS.

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# STATE OF NEBRASKA, APPELLEE, V. MICHAEL C. BARTLETT, APPELLANT.

825 N.W.2d 455

Filed December 4, 2012. No. A-12-080.

1. **Sentences: Appeal and Error.** An appellate court will not disturb a sentence imposed within the statutory limits absent an abuse of discretion by the trial court.

Appeal from the District Court for Douglas County: GREGORY M. SCHATZ, Judge. Sentence vacated, and cause remanded with directions.

Michael J. Decker for appellant.

Jon Bruning, Attorney General, and George R. Love for appellee.

INBODY, Chief Judge, and IRWIN and SIEVERS, Judges.

INBODY, Chief Judge.

## INTRODUCTION

Michael C. Bartlett appeals the sentence imposed upon him by the Douglas County District Court. For the following reasons, we find that the district court erred by denying Bartlett 101 days' additional credit for time served.

## STATEMENT OF FACTS

On March 12, 2010, Bartlett was charged with theft by receiving stolen property, over $1,500. Bartlett was arrested on March 12 and remained incarcerated until June 20, for a total of 101 days in custody. On October 5, Bartlett was found guilty of the charged offense and was sentenced to 4 years' supervised probation. On April 25, 2011, the State filed an information charging Bartlett with violating his probation.

On June 4, 2011, Bartlett was arrested on a new charge of terroristic threats in a separate case. Bartlett was incarcerated for both the new charge of terroristic threats and the previous probation violation and remained incarcerated for both violations from the date of his arrest until sentencing on January 3, 2012, totaling 213 days in custody.

The sentencing hearing for these two cases was consolidated by the district court, during which hearing Bartlett's counsel requested that Bartlett be given credit for the 213 days he spent in custody following his most recent arrest and that he also be given credit for the 101 days he was incarcerated in 2010 between his arrest and sentencing in the theft case. Thus, Bartlett requested a total of 314 days' credit for time served.

In the theft by receiving stolen property case, the district court resentenced Bartlett to 3 to 5 years' imprisonment with 213 days' credit for time served. In the terroristic threats case, Bartlett was sentenced to 20 months' to 5 years' imprisonment with 0 days' credit for time served, to run concurrently with the sentence imposed in the initial case. The district court determined that Bartlett was not entitled to the additional 101 days previously spent in custody from March 12 through June 20, 2010, prior to the imposition of the original sentence of probation.

Bartlett timely appealed both cases to this court, and the two cases were also consolidated on appeal. The State filed a motion for summary affirmance in case No. A-12-081 (terroristic threats case) and a suggestion of remand in case No. A-12-080 (theft case) suggesting that in case No. A-12-080, Bartlett should have received an additional 101 days' credit for time served. Bartlett filed a reply to the State's motion and suggestion, indicating that he joined in the suggestion for remand and, should the court follow the suggestion for remand, he would not oppose the motion for summary affirmance in case No. A-12-081. This court unconsolidated the two cases, summarily affirmed case No. A-12-081, and reserved ruling on the State's suggestion for remand in this case.

## ASSIGNMENT OF ERROR

Bartlett's sole assignment of error is that the district court failed to give him credit for time served in custody.

## STANDARD OF REVIEW

[1] An appellate court will not disturb a sentence imposed within the statutory limits absent an abuse of discretion by the trial court. *State v. Sidzyik*, 281 Neb. 305, 795 N.W.2d 281 (2011).

## ANALYSIS

In accordance with Neb. Rev. Stat. § 83-1,106(1) (Reissue 2008), an offender shall be given credit "for time spent in custody as a result of the criminal charge for which a prison sentence is imposed." Section 83-1,106(1) further enumerates circumstances which "shall specifically include, but shall not be limited to, time spent in custody prior to trial, during trial, pending sentence," and other situations during which an offender spends time in custody. Although the specific circumstances which occurred in Bartlett's case are not specifically set out in the statute, clearly the statute does not limit the possibility of other circumstances under which an offender spends time in custody.

For example, in *State v. Becker*, 282 Neb. 449, 450, 804 N.W.2d 27, 28 (2011), the defendant pled guilty to one count of motor vehicle homicide and was sentenced to 5 years of

probation, which included a requirement that he participate in a "'work ethic camp.'" The defendant later violated his probation, and the district court eventually revoked probation and sentenced him to 5 years in prison. The district court gave the defendant credit for time served in jail, but not for the 125 days served at the work ethic camp. The Nebraska Supreme Court determined that the defendant was in custody pursuant to § 83-1,106(1) and held that in addition to the credit given for time served in jail, the defendant was also entitled to custody for the 125 days served at the work ethic camp.

In this case, the record is clear that Bartlett was in custody for 101 days prior to being sentenced to probation for the conviction in this case. The record is also clear that upon his arrest for the probation violation in this case, Bartlett spent an additional 213 days incarcerated until being sentenced. Thus, in accordance with § 83-1,106(1), the district court should have credited Bartlett with a total of 314 days for time served as requested at the sentencing hearing, instead of denying the remaining 101 days from time previously served.

Therefore, the State's motion for remand is well taken. We vacate the sentence and remand the cause to the district court with directions to grant Bartlett those additional 101 days' credit, for a total credit for time served of 314 days.

SENTENCE VACATED, AND CAUSE REMANDED WITH DIRECTIONS.

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JAN K. PLOG, APPELLEE, V.
TERRANCE L. PLOG, APPELLANT.
824 N.W.2d 749

Filed December 11, 2012. No. A-12-016.

1. **Divorce: Property Division: Appeal and Error.** In actions for the dissolution of marriage, the division of property is a matter entrusted to the discretion of the trial judge, whose decision will be reviewed de novo on the record and will be affirmed in the absence of an abuse of discretion.
2. **Divorce: Property: Words and Phrases.** Dissipation of marital assets is one spouse's use of marital property for a selfish purpose unrelated to the marriage at the time when the marriage is undergoing an irretrievable breakdown.