

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Rueben J. Love,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

August 11, 2023

Court of Appeals Case No.
23A-CR-173

Appeal from the Porter Superior
Court

The Honorable Jeffrey W. Clymer,
Judge

Trial Court Cause No.
64D02-0210-MR-8358

Memorandum Decision by Judge Crone
Judges Brown and Felix concur.

Crone, Judge.

Case Summary

- [1] Rueben J. Love appeals the trial court's calculation of his credit time when imposing sentence on a probation violation. Concluding that he has not met his burden to show that the trial court erred in its credit time calculation, we affirm.

Facts and Procedural History

- [2] A brief overview of the complex procedural history of this case follows. In October 2003, Love pled guilty in Porter County to class B felony voluntary manslaughter and class C felony battery with a deadly weapon in this case under cause number 64D02-0210-MR-8358 (MR-8358). The trial court sentenced him to a nineteen-year executed term for voluntary manslaughter and an eight-year suspended term for battery. The court ordered the sentences to be served consecutively. The record indicates that Love was released from incarceration and began serving formal probation on April 4, 2012. Appellant's App. Vol. 2 at 27.
- [3] In June 2013, Love was charged in Lake County with class A misdemeanor possession of marijuana and resisting law enforcement in cause number 45D07-1307-CM-902 (CM-902). The State filed a petition for revocation of probation in MR-8358 on August 9, 2013, alleging that Love failed to report to probation on multiple occasions as required. Thereafter, on August 13, 2013, a bench warrant was issued for Love's arrest for the probation violation.
- [4] In December 2013, Love was charged in Lake County with class A felony attempted murder, class A felony robbery, and class C felony battery with a

deadly weapon in cause number 45G02-1312-FA-38 (FA-38). Accordingly, in January 2014, the State filed an amended petition to revoke probation in MR-8358 based upon charges in both CM-902 and FA-38.

[5] The record indicates that Love was “released to parole” in MR-8358 on July 29, 2018. *Id.* at 41. At that time, he was still serving a five-year executed sentence imposed for FA-38 that began on August 21, 2014. According to Love, he was released from the Department of Correction (DOC) to parole in FA-38 on July 31, 2020.¹ Then, on April 14, 2021, Love was arrested and charged in Lake County with level 6 felony strangulation and class A misdemeanor domestic battery in cause number 45D07-2104-F6-854 (F6-854). In August 2021, he pled guilty to domestic battery and received a time-served seven-day sentence.

[6] It was not until July 11, 2022, that Love was finally arrested for the probation violation in MR-8358 based upon the outstanding 2013 Porter County arrest warrant. During a hearing held in October 2022, Love admitted to violating his probation in MR-8358 by failing to report to probation and committing a new criminal offense in FA-38. The parties subsequently submitted a recommendation to the trial court indicating that they agreed that Love should be sentenced to serve four years of his previously suspended sentence in MR-8358 in the DOC. The parties further agreed that Love was entitled to

¹ The State notes that the DOC website indicates that Love was not released from the DOC in FA-38 until July 13, 2022. However, he was clearly released earlier because he was charged with and pled guilty to committing domestic battery in Lake County on April 11, 2021.

approximately 180 days of credit time for the time he spent incarcerated following his July 11 arrest on the probation violation warrant.

[7] However, defense counsel questioned whether Love may be entitled to more credit time, claiming that he never should have been released from incarceration to parole in July 2020 on FA-38 but should have been held due to the active arrest warrant in MR-8358. The trial court twice continued the final disposition hearing so that defense counsel could gather evidence. At the January 6, 2023 final disposition hearing, defense counsel argued to the trial court that records showed that Love was released from the DOC on July 31, 2020, albeit in a different case, and that he was therefore entitled to 257 days of additional credit time toward his probation violation sentence in MR-8358 for the time he spent erroneously at liberty from July 31, 2020, to April 13, 2021, when he was arrested in F6-854. Counsel argued that Love’s release from incarceration when he should have been held on the active arrest warrant “was not [his] fault” so he should be credited for that time just as if he had been serving that time. Tr. Vol. 2 at 49.

[8] The trial court acknowledged that it appeared that Love may not have been taken into custody on the active 2013 arrest warrant earlier due to a “scrivener’s error” regarding the spelling of his first name. *Id.* at 53.² However, the trial court agreed with the State that Love was not entitled to the additional 257 days

² The record contains two spellings of Love’s first name: Rueben and Reuben.

of credit time toward his sentence in MR-8358 because between July 31, 2020, and April 13, 2021, he was released to parole on FA-38 and therefore would have been earning credit toward parole on that unrelated case. At the conclusion of the hearing, the court ordered Love to serve four years of his previously suspended eight-year sentence in the DOC with 179 days of credit time. This appeal ensued.

Discussion and Decision

- [9] Love appeals the trial court’s calculation of his credit time³ to be applied to his sentence for his probation violation in MR-8358. Specifically, he challenges the trial court’s denial of the additional 257 days of credit time argued for by his counsel during the final dispositional hearing. Because “jail time credit is a matter of statutory right, trial courts generally do not have discretion in awarding or denying such credit.” *Roberts v. State*, 998 N.E.2d 743, 747 (Ind. Ct. App. 2013) (quoting *Molden v. State*, 750 N.E.2d 448, 449 (Ind. Ct. App. 2001)). It is the defendant’s burden to show that the trial court erred in its credit time calculation. *Harding v. State*, 27 N.E.3d 330, 332 (Ind. Ct. App. 2015).
- [10] Love relies solely on our supreme court’s opinion in *Temme v. State*, 169 N.E.3d 857, 859 (Ind. 2021), to support his claim that he is “entitled to credit for the

³ “Credit time” means the sum of a person’s accrued time, good time credit, and educational credit. Ind. Code § 35-50-6-0.5(3). Love asserts on appeal that he is entitled to additional accrued time. “Accrued time” means the amount of time that a person is imprisoned, confined, on home detention as a condition of probation, or on home detention in a community corrections program. Ind. Code § 35-50-6-0.5(1).

period between July 31, 2020, and April 13, 2021,” after what he characterizes as his “accidental early release” from the DOC. Appellant’s Br. 9-10. Although Love’s characterization is creative, his reliance on *Temme* is misplaced, and our supreme court’s narrow holding is inapplicable to the facts and circumstances presented here.

[11] In *Temme*, a defendant who was originally sentenced to a nine-year executed term was erroneously released from incarceration when he still had 450 days left on his sentence. 169 N.E.3d at 859.⁴ Our supreme court determined that when a prisoner is undisputedly released or discharged from prison by mistake, without any contributing fault on his part, his sentence continues to run while he is at liberty, and he is entitled to credit for that time as if still incarcerated. *Id.* at 864. The court explained that its holding is

grounded in the idea that the State may not play cat and mouse with a defendant so as to push back a prisoner’s release date, particularly if the prisoner bears no responsibility for the State’s error. It also considers the prisoner’s interest in serving a predictable sentence, places a limit on arbitrary use of government power, and fulfills society’s expectation that a prisoner is held accountable for his or her actions.

Id. (citations and footnote omitted).

⁴ In *Temme*, neither party disputed that the defendant had been “erroneous[ly]” released early on the sentence he was serving. 169 N.E.3d at 859. Rather, the parties disputed only “how to treat the time after *Temme* was released from prison.” *Id.*

[12] Despite Love’s assertions to the contrary, the record here simply does not support his reliance on *Temme* or his claim that the trial court erred in denying his request for credit time against his sentence in MR-8358 for the period between July 31, 2020, and April 13, 2021, during which he alleges he was “erroneously released from DOC custody.” Appellant’s Br. at 9. First, we note that Love has presented no definitive evidence that he was actually released from DOC custody on July 31, 2020. Defense counsel merely stated during the final disposition hearing that parole and DOC records that he had reviewed indicated that Love was released from DOC custody on July 31, 2020, in an unrelated case, presumably FA-38. However, no such records were offered or admitted into evidence, and consequently there is no evidence in the record on appeal to establish that release date or any other date certain. Thus, even assuming Love could prove that he was entitled to additional credit time in MR-8358 based upon our supreme court’s holding in *Temme*, he has failed to present us with an adequate record from which we would be able to discern the amount of additional credit time to which he might be entitled. *See Wilhoite v. State*, 7 N.E.3d 350, 354-55 (Ind. Ct. App. 2014) (noting that it is the appellant’s burden to provide us an adequate record to permit meaningful appellate review).

[13] More significantly, Love has presented no evidence that his alleged release from custody on July 31, 2020, was “erroneous” as required by *Temme* or that any such error would apply to his sentence in MR-8358. He simply baldly asserts that “[b]ecause of the active warrant, DOC should have detained him on July

31, 2020, and transferred him to the custody of the trial court so that he could address the probation violation.” Appellant’s Br. at 13. We do not disagree that this course of action may have been preferable, as it presumably would have prevented Love from committing additional crimes in April 2021. However, Love’s argument ignores that his alleged 2020 release from custody was admittedly in an unrelated case, FA-38. Indeed, the only evidence in the record regarding Love’s service of his sentence in MR-8358 indicates that he was “release[d] to parole” on July 29, 2018. Appellant’s App. Vol. 2 at 41. Any continued DOC custody, and any subsequent alleged release therefrom in 2020, was based on his sentence in FA-38. Love at no point suggests that he was mistakenly released early while serving his sentence in MR-8358. Absent any evidence that he was discharged from prison by mistake in MR-8358, the holding in *Temme* clearly does not apply. Accordingly, the trial court did not err in rejecting Love’s claim that he is entitled to credit against his current sentence for the period he spent at liberty between July 31, 2020, and April 13, 2021.

[14] In sum, Love has not presented us with a sufficient record or otherwise met his burden to show that the trial court erred in its credit time calculation. The sentence imposed by the trial court is affirmed.

[15] Affirmed.

Brown, J., and Felix, J., concur.