

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Robert Tate Bradford,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 17, 2023

Court of Appeals Case No.
23A-CR-962

Appeal from the Harrison Superior
Court

The Honorable Joseph L.
Claypool, Judge

Trial Court Cause No.
31D01-2003-F4-173

Memorandum Decision by Judge Bailey
Judges Tavitas and Kenworthy concur.

Bailey, Judge.

Case Summary

[1] Robert Bradford appeals the trial court order denying his request for credit for the time he spent on pretrial electronic monitoring as a term of being released on bond. The sole issue is whether the trial court erred when it denied his credit-time request.

[2] We affirm.

Facts and Procedural History

[3] On March 6, 2020, the State charged Bradford with five counts of Level 4 felony sexual misconduct with a minor¹ and five counts of Level 4 felony incest with a victim less than sixteen years old.² The State subsequently amended two of the sexual misconduct counts to sexual battery, as Level 6 felonies.³ On March 9, Bradford posted bond and was released with the condition that he wear an electronic GPS monitor. The trial court also issued a no contact order prohibiting Bradford from having any contact with the alleged victim. On May

¹ Ind. Code § 35-42-4-9(a).

² I.C. § 35-46-1-3.

³ I.C. § 35-42-4-8(2).

12, Bradford filed a Motion to Remove Electronic Monitoring as a Term of Bond, and the trial court denied that motion in an order dated May 15.

[4] On April 24, 2023, Bradford entered into a plea agreement under which he pled guilty to two counts of sexual battery as Level 6 felonies, and the State agreed to dismiss all remaining counts. At the sentencing hearing, Bradford asserted that he should be given credit for the approximately three years he was on pretrial electronic monitoring. Following the testimony of Jacob R. Long, the Court Services officer who had monitored Bradford, regarding the GPS monitoring program in which Bradford had participated, the trial court denied Bradford's motion for the approximately three years of credit time. The trial court sentenced Bradford to 1,800 days in the Department of Correction ("DOC"), with 360 days executed and 1,440 days suspended, and two days of credit time. The court stayed execution of the sentence, pending appeal. This appeal ensued.

Discussion and Decision

[5] "Credit time" is a statutory right under which a convicted person is entitled to have time accrued in prison or confinement counted against his sentence. *See* Ind. Code § 35-50-6-3.1 (2019)⁴ (providing for credit for each day a person is

⁴ The crimes for which Bradford was convicted occurred in 2019; therefore, the version of Indiana Code Section 35-50-6-3.1 in effect in 2019 is the applicable version. *See, e.g., Harris v. State*, 897 N.E.2d 927, 928-29 (Ind. 2008) ("The sentencing statute in effect at the time a crime is committed governs the sentence for that crime.").

“imprisoned for a crime or confined awaiting trial or sentencing”). When a statute provides for credit time, the trial court is without discretion to deny such credit. *Id.*; see also, e.g., *Hickman v. State*, 81 N.E.3d 857, 859 (Ind. Ct. App. 2017).

[6] Bradford alleges that the period of electronic monitoring was the equivalent of being “confined” while he awaited trial and/or sentencing and, therefore, he should be given credit for that time pursuant to Indiana Code Section 35-50-6-3.1. “‘Confinement’ is without statutory definition” for purposes of the credit time statutes. *Hickman*, 81 N.E.3d at 1086. However, we have noted several relevant factors used to determine whether a person is “confined” for purposes of credit time:

whether the placement was requested by the person as a condition of probation or was otherwise voluntary; the degree of freedom of movement enjoyed by the person; the degree of direct supervision over the placement exercised by the Department of Correction, a court, or another state actor; and the degree of autonomy and privacy enjoyed by the person in the conduct of his everyday life.

Id. (citations omitted).

[7] Here, there is no question that the electronic monitoring was not voluntary, because Bradford specifically requested that this pretrial condition be removed. However, every other *Hickman* factor weighs in favor of the trial court’s decision denying credit for time spent on pretrial electronic monitoring.

[8] Bradford enjoyed a great degree of freedom of movement during the time he was released on bond; in fact, the only place from which he was restricted was an “exclusion zone” around the victim’s residence. Tr. at 15. Aside from that limited zone, Bradford was able to travel anywhere he wished in the three-year period. He was only required to get prior approval for out-of-state trips, which he did twice for trips to Florida and Tennessee. Although Bradford was required to charge the GPS monitor each morning and evening, that was not a significant restriction on his freedom of movement as presumably he had access to an electrical outlet at some point throughout the day.

[9] The degree of direct supervision “exercised”⁵ over Bradford by the State and the intrusion into his privacy were slight. Bradford was not required to regularly report to the State like he would have been if he had also been placed on home detention; rather, he was only required to meet with Long periodically for maintenance on the GPS monitor. In addition, Long testified that the GPS monitor would send an alert only if Bradford entered the exclusion zone around the victim’s residence, and there is no evidence that ever happened. Moreover, while the GPS monitor tracked Bradford’s location to within ten to thirty-five feet, Long testified that no person actually tracked Bradford’s location, and Long “hardly ever” looked at the GPS data for Bradford. Tr. at 23. Long also testified that, even hypothetically, he would not have been able to track which

⁵ See *Hickman*, 81 N.E.3d at 1086 (considering only the supervision actually exercised, rather than the amount of supervision hypothetically possible).

room of Bradford's house Bradford was in because Long did not have a floor plan of the house. Thus, the evidence shows that no person actually "exercised" supervision over Bradford's movements with any regularity, if at all, thus leaving Bradford with a large degree of autonomy and privacy. *See Hickman*, 81 N.E.3d at 1086 (finding a curfew was not a substantial imposition on the defendant's liberty where the curfew was "not very zealously enforced in fact").

[10] The trial court did not err when it denied Bradford's request for credit for time spent on pretrial electronic monitoring.

Tavitas, J., and Kenworthy, J., concur.