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IN THE
COURT OF APPEALS OF INDIANA

Sara Russell,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 20, 2022

Court of Appeals Case No.
21A-CR-2313

Appeal from the Clark Circuit
Court

The Honorable Bradley B. Jacobs,
Judge

Trial Court Cause No.
10C02-1803-F6-474

Weissmann, Judge.

- [1] The legislature has created two opportunities for the use of home detention orders following sentencing. The court may: 1) enter a home detention order as a condition of probation under Indiana Code § 35-38-2.5; or 2) impose home detention as a direct commitment to Community Corrections. *See* Ind. Code § 35-38-2.6. Option one applies to both felonies and misdemeanors. Option two is limited to certain felony convictions.
- [2] After Sara Russell pled guilty to a misdemeanor, the trial court sentenced her to one year imprisonment in the Indiana Department of Correction and purported to order her sentence to be served on home detention as a direct commitment through Community Corrections. App. Vol. II, p. 139. But Russell had been convicted only of a misdemeanor and not any of the felonies that trigger availability of sentencing under Indiana Code § 35-38-2.6.
- [3] After Sara Russell allowed her home detention ankle bracelet to die, the State filed a Level 6 felony escape charge under Indiana Code § 35-44.1-3-4(b), claiming Russell violated a home detention order. Russell moved to dismiss the charge, arguing that the trial court never entered a “home detention order” and she thus never violated one. The trial court denied the motion, and this interlocutory appeal ensued. We reverse, agreeing with Russell that no “home detention order” was entered and that Russell cannot be prosecuted for the charged escape without such an order.

Facts

- [4] Russell pleaded guilty to Class A misdemeanor theft in exchange for the State’s dismissing charges of burglary, illegal possession of a syringe, and possession of paraphernalia. Two months later, the trial court sentenced her to one year imprisonment in the Indiana Department of Correction but allowed her to serve the sentence on home detention through Community Corrections. App. Vol. II, p. 139. The court entered an “Order Granting Placement,” summarily ordering Russell to participate in home detention. *Id.* at 140. The order also directed her to be “released to the custody of the Clark County Community Corrections and [to] report immediately.” *Id.*
- [5] Six weeks later Russell and a Community Corrections staff member signed a document entitled “Conditions of the Clark County Home Detention Program” (Conditions). *Id.* at 141-43. In that document, Russell agreed: “I further understand that I shall charge the battery on my anklet one (1) or two (2) hours per day, and that it is a violation of my placement to allow (intentionally or not) the battery to die.” *Id.* at 143.
- [6] One week later, the State petitioned to revoke Russell’s placement on home detention. The petition alleged that Russell had “[u]napproved movements” on her second and third days of home detention, that she stopped reporting on the fourth day, and that she allowed her battery to die on the fifth day without contacting Community Corrections. *Id.* at 145. After Russell admitted the

violation, the trial court ordered her returned to home detention and treatment. *Id.* at 129.

- [7] The State also charged Russell with escape, a Level 6 felony, based on her “allow[ing] the battery on her GPS ankle bracelet to die.” *Id.* at 24. Russell moved to dismiss the escape charge, asserting that it did not state an offense. The trial court denied the motion but certified the issue for interlocutory appeal. This Court accepted jurisdiction and later granted, in part, the State’s motion to compel Russell to produce a transcript of the dismissal. The transcript was filed May 4, 2022.

Discussion and Decision

- [8] Russell argues that the trial court erroneously denied her motion to dismiss because she cannot be prosecuted for escape. Generally, we review the denial of a motion to dismiss for an abuse of discretion. *McCown v. State*, 890 N.E.2d 752, 756 (Ind. Ct. App. 2008). Where, as here, the trial court’s judgment depends on interpretation of a statute, however, review of that judgment is a question of law. *Id.* We evaluate questions of law de novo, without deference to the trial court’s determinations. *Id.*

I. Statutory Definition

- [9] The State charged Russell with level 6 felony escape, which requires proof that she “knowingly or intentionally violat[e] a home detention order.” Ind. Code § 35-44.1-3-4(b). The legislature has specified the parameters of a “home detention order” in Indiana Code § 35-38-2.5-6 (home detention order statute).

A “home detention order” must include various details about the defendant’s responsibilities on home detention and bar the defendant’s violation of the terms of probation or commission of a new crime. Ind. Code § 35-38-2.5-6(1), (3)-(9). The order also must warn that violation of the home detention order may result in a prosecution for felony escape. Ind. Code § 35-38-2.5-6(2).

[10] By its express terms, the home detention order statute applies to home detention entered as a condition of probation. Ind. Code § 35-38-2.5-6 (“An order for home detention of an offender under section 5 of this chapter must include”; Ind. Code § 35-38-2.5-5(a) (providing that, absent express exceptions, “as a condition of probation a court may order an offender confined to the offender’s home for a period of home detention”); *Brown v. State*, 894 N.E.2d 598, 600 (Ind. Ct. App. 2008) (“Ind. Code § 35-38-2.5-5 . . . provides for home detention as a condition of probation.”). But because the Record contains no probation order or probation conditions, it is clear the trial court did not sentence Russell to home detention as a condition of probation. Thus, Russell’s home detention order did not conform to the requirements of Indiana Code § 35-38-2.5-6.

[11] Other than ordering home detention as a condition of probation, the legislature has provided only one other way to impose home detention at a defendant’s original sentencing. Indiana Code § 35-38-2.6 authorizes home detention imposed as a direct commitment to Community Corrections, but it only applies to persons being sentenced for certain non-suspendible felonies. *See* Ind. Code § 35-38-2.6-1.

[12] Given that Russell was convicted of a misdemeanor, she was not eligible for home detention as a direct commitment under Indiana Code § 35-38-2.6. *See id.* The trial court therefore could only impose home detention as a condition of probation under Indiana Code § 35-38-2.5-5, which it did not do. Instead, the court appears to have sentenced Russell to home detention as a direct commitment to Community Corrections. Notably, in its order certifying this interlocutory appeal, the court specified that it “sentenced [Russell] to home detention”; “Russell was given no terms of home detention at that time but was ordered to report[] to Community Corrections”; and “Community Corrections was to impose the conditions of GPS monitoring pursuant to I.C. 35-38-2.6-3(a)” App. Vol. II, p. 110.

[13] Although the propriety of Russell’s underlying sentence to home detention is not before us, this background informs our analysis of the issue on appeal: whether the trial court properly refused to dismiss the escape charge.¹ Because the trial court did not enter home detention as a condition of probation—the only means available for a misdemeanant like Russell—it did not issue any “home detention order.” Because no “home detention order” exists, the State

¹ In its order certifying the order of dismissal for interlocutory appeal, the trial court noted:

The Court has found that the term “[home detention] order” in the Escape statute includes terms set by Community Corrections. There is a need for a higher court to explicitly confirm that ‘order’ includes terms set by Community Corrections and thereby prevent a potential wrongful conviction.

App. Vol. II, p. 111. Thus, we could not provide that guidance without explaining the reasons for the lack of a home detention order in this case.

had no grounds for charging Russell with Level 6 felony escape based on her alleged violation of a “home detention order.” Russell therefore is entitled to dismissal of that charge. *See* Ind. Code § 35-34-1-4 (permitting dismissal of indictment or information where “[t]he facts stated do not constitute an offense.”); *State v. Sturman*, 56 N.E.3d 1187, 1196 (Ind. Ct. App. 2016) (ruling that dismissal is warranted where “the information is facially deficient in stating an alleged crime”).

[14] We reverse the trial court’s denial of Russell’s motion to dismiss and remand for entry of an order of dismissal on the charge of Level 6 felony escape.

Najam, J., and Vaidik, J., concur.