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IN THE
COURT OF APPEALS OF INDIANA

Dustin R. Paul,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 21, 2021

Court of Appeals Case No.
21A-CR-166

Appeal from the Howard Superior Court

The Honorable William Menges, Jr., Special Judge

Trial Court Cause Nos.
34D01-1909-F4-2836
34D02-1004-FB-74
34D02-1607-F4-174

Bailey, Judge.

Case Summary

[1] Dustin R. Paul ("Paul") brings this consolidated appeal concerning the calculation and allocation of credit time. In this case, Paul was incarcerated and simultaneously awaiting the resolution of multiple matters, *i.e.*, pending matters in Cause Nos. 34D02-1004-FB-74 (the "First Cause"), 34D02-1607-F4-174 (the "Second Cause"), and 34D01-1909-F4-2836 (the "Third Cause"). As required by Indiana Code Section 35-50-1-2(e) under the circumstances, the trial court imposed consecutive sentences across the causes so that the sentence in the Third Cause ran consecutive to the sentence in the Second Cause, which ran consecutive to the sentence in the First Cause. When the court calculated good time credit, it used the earning rate associated with the Third Cause. The court then applied that credit time to the Third Cause. Although the approach to credit time did not affect the aggregate length of the sentence, the approach prolonged the time it would take Paul to satisfy the sentence in the First Cause.

[2] Paul appeals, arguing that the trial court should have calculated and allocated the credit time on a "first in, first out" basis. We agree. When a person has been simultaneously confined in connection with multiple causes and the court must impose consecutive sentences across those causes, Indiana law requires the trial court to (1) calculate credit time at the rate associated with the first sentence in the sequence of sentences and (2) allocate the time to that first sentence. Concluding that Indiana law contemplates a "first in, first out" approach under the circumstances, we reverse the trial court's calculation and

allocation of credit time and remand for the court to address credit time issues consistent with this opinion. We otherwise fully affirm the sentencing orders.

Facts and Procedural History

[3] Paul was on probation in the First Cause when the State filed charges in the Second Cause. Paul pleaded guilty and the sentence in the Second Cause was imposed consecutive to the sentence in the First Cause. Paul was again placed on probation. While Paul was on probation, the State filed petitions to revoke in both the First Cause and the Second Cause. The court issued arrest warrants in both causes. Not long thereafter, law enforcement encountered Paul near the scene of a reported burglary in progress. Paul gave the name of Justin Pryor. After Paul later provided his own name, Paul was arrested and informed that he "was being charged on the PTR Warrant, False Informing and Burglary." App. Vol. 3 at 250. Two days later, the State filed charges in the Third Cause.

[4] Paul admitted to certain allegations in each cause. Eventually, the court held a consolidated hearing to address sentencing matters. At the hearing, the court revoked Paul's probation in the First Cause, ordering that Paul serve 1,095 days of his previously suspended sentence in the Indiana Department of Correction (the "DOC"). The court also revoked Paul's probation in the Second Cause, ordering that Paul serve 548 days of his previously suspended sentence in the DOC. Finally, the court imposed a sentence in the Third Cause, ordering that Paul serve 3,285 days in the DOC. In each cause, the trial court issued an Abstract of Judgment indicating that it was imposing consecutive sentences.

[5] In resolving the matters, the trial court awarded Paul 150 days of accrued time for actual time served. As to good time credit, the court used the statutory rate associated with the Third Cause, *i.e.*, one day of good time credit for every three days served. The court did not use the rate associated with the First Cause, which was one day of good time credit for every day served. Applying the one-for-three rate, the court awarded fifty days of good time credit, for 200 days of credit time.[1] The court allocated that time to the sentence in the Third Cause, allocating no time to the sentences in the First Cause and the Second Cause.

[6] Paul now brings this consolidated appeal.

Discussion and Decision

[7] 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)). To the extent that a claim involving credit time requires statutory interpretation, we engage in *de novo* review. *Temme v. State*, 169 N.E.3d 857, 859 (Ind. 2021). As to statutory interpretation, our primary goal is to determine and give effect to the intent of the legislature. *Rodriguez v. State*, 129 N.E.3d 789, 796 (Ind. 2019). "In doing so, we examine the statutory language itself to 'give effect to the plain and ordinary meaning of statutory

[1] In its written order, the court referred to "day for day credit" but did not apply that rate. App. Vol. 4 at 62.

terms.'" *Daniels v. FanDuel, Inc.*, 109 N.E.3d 390, 394 (Ind. 2018) (quoting *State v. Hancock*, 65 N.E.3d 585, 587 (Ind. 2016)). Moreover, we construe statutes with a "presumption that the legislature 'intended the statutory language to be applied logically and consistently with the statute's underlying policy and goals.'" *Rodriguez*, 129 N.E.3d at 796 (quoting *Daniels*, 109 N.E.3d at 394).

[8] The instant case involves the calculation and allocation of credit time. "Credit time" means "the sum of a person's accrued time, good time credit, and educational credit." I.C. § 35-50-6-0.5(2). "Accrued time" means "the amount of time that a person is [actually] imprisoned or confined." I.C. § 35-50-6-0.5(1). Moreover, "good time credit" means "a reduction in a person's term of imprisonment or confinement awarded for the person's good behavior while imprisoned or confined." I.C. § 35-50-6-0.5(4). Every offense is associated with a credit time class, which dictates the rate at which a person earns good time credit. *See* Ind. Code §§ 35-50-6-3 (setting forth credit time classes for a person convicted before July 1, 2014), -3.1 (setting forth credit time classes for a person convicted after June 30, 2014), -4 (assigning initial credit time classes based upon the level of the offense). Here, the credit time class associated with the First Cause allowed Paul to earn one day of good time credit for every day of accrued time. *See* I.C. §§ 35-50-6-3(b), -4(a) (2010). In contrast, the class

associated with the Third Cause allowed Paul to earn one day of good time credit for every three days of accrued time. *See* I.C. §§ 35-50-6-3.1(c), -4(b).[2]

[9] Just as the trial court generally lacks discretion with respect to the calculation and allocation of credit time, *see Roberts*, 998 N.E.2d at 747, the trial court is also bound by Indiana Code Section 35-50-1-2(e), which requires consecutive sentences when a person "commits another crime . . . before the date the person is discharged from probation, parole, or a term of imprisonment imposed for the first crime[.]" Consecutive sentences are "sentences . . . to be served in sequence." *Consecutive Sentences*, Black's Law Dictionary (11th ed. 2019). Moreover, a sequence is a "chronological succession." Webster's Third New Int'l Dictionary 2071 (2002). Thus, when the trial court imposes consecutive sentences, those sentences must be served in a chronological succession.

[10] As to the calculation and allocation of credit time, when a person has been incarcerated in connection with multiple pending matters and the trial court ultimately imposes consecutive sentences, the "credit time cannot be [applied] against each of the underlying sentences." *Purdue v. State*, 51 N.E.3d 432, 437 (Ind. Ct. App. 2016). Rather, the court must apply the credit time only once. *See State v. Lotaki*, 4 N.E.3d 656, 657 (Ind. 2014). Indeed, to do otherwise would result in multiplying the offender's credit time, "effectively enabl[ing] him to serve part of the consecutive sentences concurrently." *Id.* at 657; *cf.*

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[2] It is possible for a person to be reassigned to a different credit time class. *See generally* I.C. § 35-50-6-4. However, here, there is no indication that Paul had been reassigned in connection with any of the causes.

Purdue, 51 N.E.3d at 436 (explaining that when a person is instead sentenced to concurrent terms, "credit time [is] applied against each separate term").[3]

[11] Turning to the matter at hand, Paul does not argue that he was entitled to have his credit time applied more than once.[4] Rather, Paul contends that the trial court should have focused on the First Cause when calculating and applying credit, taking a "first in, first out" approach.[5] That is, in this case, the trial court used the good time credit earning rate applicable to the Third Cause and then applied the credit to the sentence imposed in that cause, which was the last of the consecutive sentences. This approach to credit time had no impact on the

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[3] In *Lotaki* our Supreme Court stated that a court should deduct credit time "from the aggregate total of the consecutive sentences, not from an individual sentence." 4 N.E.3d at 657. When read out of context, this statement suggests that credit time should never be allocated to a particular sentence in the series. *See id.* Notably, however, *Lotaki* involved a scenario where the trial court seemingly deducted credit time from two sentences: the first and second sentences in the aggregate term. *See id.* On appeal, the *Lotaki* Court reversed, identifying a risk of impermissible "double credit." *See id.* Having reviewed *Lotaki* and the pertinent cases cited therein, we think that the more accurate reading of *Lotaki* is that, when it comes to consecutive sentences, credit time should be applied only once. *See id.* Nonetheless, to the extent *Lotaki* could be read to require allocation of credit time to the aggregate term rather than any underlying sentence, we note that *Lotaki* was decided in early 2014, at which point Indiana law allowed for day-for-day good time credit regardless of the severity of the offense. *See* I.C. §§ 35-50-6-3(a), -4(a) (2013). Since then, our legislature substantially revised Indiana criminal law and eliminated the uniform credit time class. *See* I.C. § 35-50-6-3.1, -4 (2014). Under the new system, sentences could carry different rates for earning good time credit. *Id.* Because of this potential for differences, courts must allocate credit time to a specific sentence. Indeed, without knowing which sentence produced the good time credit, it would not be possible to accurately calculate the time remaining in the aggregate term. Put differently, one cannot calculate the distance traveled (*i.e.*, the credit time earned) without knowing the speed of travel (*i.e.*, the good time credit earning rate).

[4] At one point, Paul baldly asserts that the trial court "denied Paul credit time for periods of incarceration after his arrest[.]" Br. of Appellant at 16. To the extent Paul is claiming that he earned more than 150 days of accrued time, Paul has waived this contention for failing to develop cogent argument. *See* Ind. Appellate Rule 46(A)(8)(a); *Overstreet v. State*, 877 N.E.2d 144, 153 n.4 (Ind. 2007) (identifying appellate waiver). We focus only on Paul's arguments regarding the award of good time credit based on 150 days of accrued time.

[5] Although the State points out that Paul advanced this argument "[w]ithout citation to authority," Br. of Appellee at 9, the State does not assert that Paul has waived his argument.

overall aggregate length of Paul's sentence. Indeed, as Paul continues to serve time in the DOC, he will satisfy each sentence in turn, positioned to earn good time credit at the applicable rate as he fulfills each sentence. Nonetheless, by applying credit time to the last of the three sentences, the court has prolonged the time until Paul will satisfy the sentence in the First Cause. That is, during the period of simultaneous incarceration, Paul essentially "stood idle" with respect to the sentence in the First Cause while "traveling down the road" with respect to the Third Cause.

[12] Indiana Code Section 35-50-1-2(e) requires consecutive sentences under the circumstances. Moreover, as earlier noted, consecutive sentences are "sentences . . . to be served in sequence," *Consecutive Sentences*, Black's Law Dictionary (11th ed. 2019), *i.e.*, in a chronological succession. In other words, the statute requires that consecutive sentences run in order. In this case, the trial court applied the credit time to the sentence in the Third Cause, thereby deviating from the proper sequence. Indeed, the court essentially allowed Paul to partially serve the sentence in the Third Cause rather than first satisfy the sentence in the First Cause and, next, the sentence in the Second Cause. This approach did not comport with the plain mandate of Section 35-50-1-2(e).[6] We therefore conclude that the court erred in calculating and allocating credit time.

[6] Whereas Section 35-50-1-2(e) dictates the earning rate when a person has reoffended while on probation and therefore faces mandatory consecutive sentences, Section 35-50-6-4(h) instead dictates the rate when a person has awaited trial on multiple pending charges. In pertinent part, the latter statute provides as follows:

[13] Having concluded that the trial court erred with respect to credit time, we reverse those portions of the orders addressing credit time. We remand with instructions to calculate and allocate credit time consistent with this opinion by focusing on the First Cause, *i.e.*, the first sentence in the sequence of sentences. We otherwise affirm as to the matters addressed at the consolidated hearing.

[14] Affirmed in part, reversed in part, and remanded with instructions.

Crone, J., and Pyle, J., concur.

> This subsection applies only to a person imprisoned awaiting trial. A person imprisoned awaiting trial is initially assigned to a credit class based on the most serious offense with which the person is charged. If all the offenses of which a person is convicted have a higher credit time class than the most serious offense with which the person is charged, the person earns credit time for the time imprisoned awaiting trial at the credit time class of the most serious offense of which the person was convicted.

I.C. § 35-50-6-4(h). This statute—which applies "only to a person imprisoned awaiting trial," *id.*— ensures that "if the defendant is actually convicted of a lower-level offense than that charged, the defendant's credit time class is to be based on the conviction, not the charge." *Moon v. State*, 110 N.E.3d 1156, 1161 (Ind. Ct. App. 2018). Of course, Section 35-50-6-4(h) has no bearing here. Indeed, although Paul was awaiting trial in connection with one cause, he was also awaiting the resolution of petitions to revoke in causes that had already produced consecutive sentences. Therefore, Section 35-50-1-2(e) controls the credit time earning rate.