

## MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Michelle Colen,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

April 22, 2021

Court of Appeals Case No.  
20A-CR-1932

Appeal from the Jefferson Circuit  
Court

The Honorable Richard G. Striegel

Trial Court Cause No.  
39C01-1605-F3-385

**Mathias, Judge.**

- [1] The Jefferson Circuit Court revoked Michelle Colen's probation and ordered that she serve her 1,443-day suspended sentence at the Department of Correction. Colen appeals, arguing that the court failed to award appropriate

credit time for the ninety days she spent on electronic monitoring while on probation. Concluding that Colen has failed to establish that she is entitled to credit time, we affirm.

### **Facts and Procedural History**

[2] On February 24, 2017, Michelle Colen was convicted of Level 4 felony dealing in methamphetamine, Level 6 felony maintaining a common nuisance, and Level 6 felony possession of methamphetamine. The court sentenced Colen to six years in the Department of Correction and recommended her for the Incarceration with a Purpose program. Colen filed a motion for sentence modification on April 12, 2018, after completing the program. Appellant's App. pp. 167–68. The court granted her motion on June 6, 2018, and ordered Colen to serve the remaining 1,443 days of her suspended sentence on probation with community corrections. *Id.* at 186.

[3] Colen proceeded to violate the terms of her probation several times between June 2018 and July 2020. Tr. pp. 12–15; *see also* Appellant's App. pp. 187–89. As a result of these violations, Colen twice entered into administrative agreements with community corrections. Appellant's App. pp. 209, 211. In the first agreement, which she entered into on December 4, 2018, Colen agreed to thirty days of electronic monitoring. *Id.* at 211. Similarly, on February 14, 2020, she agreed to sixty days of electronic monitoring. *Id.* at 209. These stints of electronic monitoring are denoted as “Day Reporting GPS Daily Fee” on Colen's fees document. *Id.* at 219.

[4] Colen continued to violate the terms of her probation after the second administrative agreement, and community corrections filed a petition to revoke on July 8, 2020. *Id.* at 187–89. On September 22, the court revoked Colen’s probation and ordered she serve the balance of her 1,443-day sentence at the Department of Correction. *Id.* at 227–28. Colen was credited with forty-eight days of actual time served from the date of her arrest, August 7, and the date of her probation violation hearing, September 22. *Id.* She also received sixteen days of good behavior credit, for a total credit time of sixty-four days. *Id.* Colen did not raise any objections to the court’s credit time calculation at the probation violation hearing.

[5] Colen now appeals.

## **Discussion and Decision**

[6] Colen claims the trial court erred in its credit-time calculation by failing to award credit for the ninety days she spent on electronic monitoring with community corrections. Appellant’s Br. at 8. The State asserts that Colen has waived her right to raise this issue on appeal because she failed to object at the September 22 hearing. Appellee’s Br. at 9. However, “[w]e may correct sentencing errors by the trial court on appeal even though the issue was not raised below.” *Groves v. State*, 823 N.E.2d 1229, 1232 (Ind. Ct. App. 2005) (citation omitted). We thus address the merits of Colen’s claim and conclude that the trial court did not err in excluding the ninety days Colen spent on electronic monitoring from its credit-time calculation.

- [7] Whether a defendant was enrolled in a community corrections program through direct placement or as a condition of probation determines the applicable statutes and credit-time calculation. See *Shaffer v. State*, 755 N.E.2d 1193, 1195 (Ind. Ct. App. 2001) (Vaidik, J., concurring). Colen claims that [Indiana Code section 35-38-2.6-6](#) entitles her to credit time for home detention. Appellant's Br. at 11. However, chapter [35-38-2.6](#) applies only to direct placement in a community corrections program. Here, Colen was placed in a community corrections program as a condition of probation. See Appellant's App. pp. 184–85. Therefore, [Indiana Code section 35-38-2.6-6](#) does not apply to her case.
- [8] Instead, the applicable statute is [Indiana Code section 35-38-2.5-5](#) which governs home detention with community corrections as a condition of probation. Under subsection (e) of the statute, “A person confined on home detention as a condition of probation receives one (1) day of accrued time for each day the person is confined on home detention.” I.C. § [35-38-2.5-5\(e\)](#). Jail time credit is a statutory right; therefore, trial courts do not have discretion in awarding credit for time served. *Purdue v. State*, 51 N.E.3d 432, 436 (Ind. Ct. App. 2016) (citation omitted). 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).
- [9] Although electronic monitoring may be used to enforce court-ordered home detention, electronic monitoring is also used for purposes other than home detention. In Jefferson County, electronic monitoring may be used in

conjunction with “day reporting,” which is an alternative sentencing option distinct from home detention. *Day Reporting*, JEFFERSON COUNTY IND., <https://jeffersoncounty.in.gov/225/Day-Reporting> (last visited Apr. 7, 2021) [<https://perma.cc/W47S-AZ2V>]. Because day reporting “afford[s] a probationer nearly the same degree of freedom of movement, autonomy, and privacy as living at liberty,” [Indiana Code section 35-38-2.5-5\(e\)](#) does not provide credit time for day reporting. *Hickman v. State*, 81 N.E.3d 1083, 1086 (Ind. Ct. App. 2017).

[10] Here, the record indicates that Colen was placed on day reporting rather than court-ordered home detention. Home detention was not included as a condition of probation in the trial court’s June 6, 2018 Order on Petition for Modification of Sentence. Appellant’s App. pp. 17, 186. And there are no recorded modifications to Colen’s community corrections program until December 4, 2018, when, as a result of a number of probation violations, Colen consented to thirty days of electronic monitoring in an administrative agreement with the community corrections. *Id.* at 211. Following additional probation violations, Colen entered into a second administrative agreement with community corrections for sixty days of electronic monitoring on February 14, 2020. *Id.* at 209.

[11] The trial court did not order either of these administrative agreements, and neither agreement referenced “home detention.” Further, the administrative agreements did not include many of the statutory requirements for home detention orders. [I.C. § 35-38-2.5-6](#). Most notably, the agreements do not

restrict Colen's travel, require that she provide community corrections with a travel schedule, or warn that a violation may result in prosecution for the crime of escape. *Id.* Further, Colen was assessed fees for "day reporting," which is an alternative sentencing option distinct from home detention. In sum, Colen is not entitled to additional credit time because she has not established that she was placed on court-ordered home detention.

## **Conclusion**

[12] Colen has not met her burden of establishing that the trial court erred in its credit time calculation.

[13] Affirmed.

Riley, J., and Crone, J., concur.