

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

SEPTEMBER 1995 SESSION

FILED
October 26, 1995
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
Appellee,)

NO. 03C01-9502-CR-00057

V.)
)
)

JEFFERSON COUNTY
NO. 5335

ELIZABETH ANN MILLER GREEN,)
)
Appellant.)

HON. WILLIAM R. HOLT, JUDGE

(Driving under the influence, 3rd,
and driving on a revoked license)

FOR THE APPELLANT:

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FOR THE APPELLEE:

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OPINION FILED: _____

Affirmed

Lee Russell, Special Judge

OPINION

_____ Defendant Elizabeth Ann Miller Green appeals from the trial judge's denial of her motion for jail credit for time spent voluntarily as an inpatient in an alcohol treatment facility prior to her sentencing on a plea of guilty to driving under the influence, third offense, and driving on a revoked license. The defendant contends that the trial judge erred in interpreting Tennessee Code Annotated Section 55-10-403 as precluding credit for time spent in a treatment facility as opposed to time spent incarcerated in jail. We affirm the trial judge.

The defendant was arrested on April 7, 1994, for driving under the influence, third offense, and for driving on a revoked driver's license. She was bound over to the grand jury on April 22, 1994, and she was indicted on the original charges on May 2, 1994. On November 17, 1994, the defendant entered a plea of guilty to both charges. The trial judge sentenced the defendant to eleven months and twenty-nine days on the DUI charge and suspended all except one hundred and twenty days in jail. He sentenced her to serve six months in jail on driving on a revoked license, concurrently, with all except forty-eight hours suspended.

The defendant moved at her sentencing hearing for jail credit for time at East Tennessee Baptist Hospital Behavioral Health Center from June 7, 1994, to July 5, 1994, and from July 14, 1994, to July 19, 1994. The treatment was neither ordered nor ever suggested by the trial judge and was therefore entirely voluntarily. She was entitled to and was given pre-trial jail credit for time spent in jail prior to making bond after her initial arrest. She was also voluntarily a resident at a half-way house.

Counsel for the Defendant has argued that the trial judge wanted to give jail credit for the treatment period but that the trial judge interpreted Tennessee Code Annotated Section 55-10-403 as precluding such credit. The record reveals in that regard that the trial judge stated as follows at the conclusion of a hearing on November 17, 1994, on jail credit for the defendant's confinement for treatment:

My sentence is the same as I've announced, and I don't think I can give credit for that.

The issue then is whether the trial judge correctly interpreted Tenn. Code Ann. Section 55-10-403. It is not a question of whether the trial court abused his discretion in denying credit, but rather is a question of whether the trial court correctly concluded that he had no discretion under the controlling statute.

Tenn. Code Ann. Section 55-10-403(a)(1) provides as follows:

For the third or subsequent conviction [for DUI], the person or persons shall be confined in the county jail or workhouse for not less than one hundred, twenty (120) days nor more than eleven (11) months and twenty-nine (29) days. . . .

Tenn. Code Ann. Section 55-10-403(b)(1) provides that a violator of the DUI statute will not be eligible for suspension of the balance of his sentence "until such time as such person has fully served day-for-day at least the statutory minimum sentence provided by law." These statutes are unambiguous and should be interpreted and enforced so as to give effect to the General Assembly's intention and purpose determined by giving the statutory language its normal and ordinary meaning. See *Carson Creek Vacation Resorts v. Department of Revenue*, 865 S.W.2d 1, 2 (Tenn. 1993).

This specific issue has previously been addressed by the Court of Criminal Appeals in the case of *State v. Morrow*, 889 S.W.2d 63 (Tenn. Crim. App. 1989). In that case, the defendant was convicted of third offense DUI and was denied credit by the trial judge for successful voluntary inpatient treatment at New Life Lodge, a residential treatment facility. The trial judge stated at the sentencing hearing that if he had the authority to sentence the defendant to forty-five days in a facility like New Life Lodge that he would do so. This court agreed with the trial judge and observed as follows:

We know of no statute authorizing this jail credit when the defendant voluntarily enters a privately operated residential alcohol treatment facility....

Id. at 65.

The trial court in the case *sub judice* was correct to interpret Tenn. Code Ann. Section 55-10-403(b)(1) as not allowing him the discretion to grant jail credit for inpatient alcohol treatment. The case is remanded to the trial court for enforcement of its judgment previously entered.

LEE RUSSELL, SPECIAL JUDGE

CONCUR:

WILLIAM M. BARKER, JUDGE

JOHN K. BYERS, SENIOR JUDGE